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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1937

No. 705

PETROLEUM EXPLORATION, INC., APPELLANT,

vs.

**PUBLIC SERVICE COMMISSION OF KENTUCKY
ET AL.**

**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE EASTERN DISTRICT OF KENTUCKY**

FILED JANUARY 15, 1938.

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**IN UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF KENTUCKY**

In Equity. No. 1205.

PETROLEUM EXPLORATION, a Maine Corporation,
Complainant,

vs.

PUBLIC SERVICE COMMISSION OF KENTUCKY, a Kentucky Body
Corporate, J. C. W. Beckham, Thos. B. McGregor and
James W. Cammack, Jr., Defendants

BILL IN EQUITY—Filed July 24, 1937

To the Honorable Hiram Church Ford, Judge of said Court:

Said Petroleum Exploration brings this bill of complaint
against said Public Service Commission of Kentucky, J. C.
W. Beckham, Thos. B. McGregor and James W. Cammack,
Jr., and thereupon complains and says:

First

The full name of the complainant is "Petroleum Ex-
ploration"; it is a corporation organized and existing solely
under the laws of the State of Maine; its principal office
in said state is at 443 Congress Street, in the city of Port-
land, in the southern division of the district of Maine; and
it is duly authorized and qualified to hold property and do
business as a foreign corporation in the state of Kentucky.
[fol. 2] The full names of the said defendants, so far as
known to the complainant, are "Public Service Commission
of Kentucky", "J. C. W. Beckham", "Thos. B. McGregor"
and "James W. Cammack, Jr.", which are the names com-
monly used by said defendants and by which they are com-
monly known.

Said Public Service Commission of Kentucky, hereinafter
called "Commission", is a body corporate created and exist-
ing solely by and under the laws of the state of Kentucky
(Ky. Stat. 3952-2); and its principal office in said state is
in the city of Frankfort, in the eastern district of Kentucky.

Said J. C. W. Beckham, Thos. B. McGregor and James W.
Cammack, Jr., are members of the Commission and are all

the members thereof; and each of them is a citizen of the state of Kentucky and a resident of said city of Frankfort, in the eastern district of Kentucky. Said J. C. W. Beckham is chairman of the said Commission.

Second

The matter in controversy herein, exclusive of interest and costs, exceeds the sum of three thousand dollars, and this suit is wholly of a civil nature and (a) arises under the Constitution and laws of the United States and (b) is between citizens of different states.

Third

The complainant was organized as aforesaid in 1916 for the purpose of exploring for petroleum a large area of land known as the "Miller-Prewitt-Goff (Wells Heirs)" tract, containing some 6,000 acres, more or less, situate in Lee, Wolfe, Powell and Estill counties, in the state of Kentucky. The results of such exploration having proven profitable, the complainant continued its explorations elsewhere in [fol. 3] the state of Kentucky, and in the course thereof discovered valuable deposits of natural gas.

The complainant is now engaged, inter alia, in the operation of lands in Owsley, Jackson, Clay and Knox counties, in the state of Kentucky, for, and the production therefrom of, natural gas. The said gas is contained in porous portions, sometimes called "pay-streaks", of a subterranean stratum or geological horizon called the Corniferous limestone, in isolated and limited areas, sometimes called "fields", and is produced by means of wells sunk thereto from the surface. The complainant's rights to so operate said lands for and produce therefrom the said gas are vested in it by virtue of divers grants from the several land owners, commonly called "oil and gas leases", of which Exhibit A hereto attached, referred to and made part hereof, is typical.

Part of the said gas produced by the complainant from said fields in said Owsley, Jackson and Clay counties, is sold by it to Central Kentucky Natural Gas Company, a corporation, hereinafter sometimes called "Central", and delivered at the corporate limits of the city of Lexington, in the county of Fayette, in the state of Kentucky, pursuant to a written contract dated the 24th day of March, 1937, entered into between said Central and the complainant, a

true copy whereof, marked "Exhibit B", is hereto attached, referred to and made part hereof.

Part of the said gas produced by the complainant from the said fields last mentioned is sold by it to said Central and delivered at the corporate limits of the city of Richmond, in the county of Madison, in the state of Kentucky, and of the city of Irvine, in the county of Estill, in the state of Kentucky, pursuant to a written contract, dated the 7th [fol. 4] day of December, 1927, entered into between one D. L. Johnson and the complainant, a true copy whereof, marked "Exhibit C", is hereto attached, referred to and made part hereof. The rights of the said Johnson under said contract, by virtue of mesne assignments, have come to vest in the said Central.

In addition to said gas produced by the complainant from said Knox county field, it also purchases in said field like gas so produced by others operating therein. All of the said gas so produced from and purchased in said Knox county field is sold by the complainant to the Peoples Gas Company of Kentucky, a corporation, hereinafter sometimes called "Peoples".

A portion of said gas so produced from and purchased in said Knox county field and sold to said Peoples is delivered at the corporate limits of the city of Barbourville, in the county of Knox, in the state of Kentucky, pursuant to a written contract, dated the 17th day of September, 1930, entered into between the said Peoples and the complainant, a true copy whereof, marked "Exhibit D", is hereto attached, referred to and made part hereof. The said contract last mentioned was modified by another written contract, dated the 1st day of December, 1932, entered into between said Peoples and the complainant, a true copy whereof, marked "Exhibit E", is hereto attached, referred to and made part hereof. Said contract last mentioned as so modified was further modified from June 1, 1933, to June 1, 1938, and thereafter to June 1, 1941 (but the modifications were not formally documented), to provide for a price of 18¢ per 1,000 cubic feet (hereinafter sometimes abbreviated "Mcf") for gas distributed for commercial and industrial use.

The remainder of said gas so produced from and purchased in said Knox county field and so sold to said [fol. 5] Peoples is delivered at the corporate limits of the city of Corbin, in the county of Whitley, in the

state of Kentucky, pursuant to a written contract, dated the 17th day of December, 1930, entered into between said Peoples and the complainant, a true copy whereof, marked "Exhibit F", is hereto attached, referred to and made part hereof. The said contract last mentioned was modified by another written contract, dated the 29th day of September, 1931, entered into between said Peoples and the complainant, a true copy whereof, marked "Exhibit G", is hereto attached, referred to and made part hereof. The said contract last mentioned as so modified was further modified by another written contract, dated the 15th day of May, 1933, entered into between said Peoples and the complainant, a true copy whereof, marked "Exhibit H", is hereto attached, referred to and made part hereof. Said contract last mentioned as so modified was further modified from June 1, 1933, to June 1, 1938, and thereafter to June 1, 1941 (but the modifications were not formally documented), to provide for a price of 18¢ per Mcf for gas distributed for commercial and industrial use.

A part of the said gas produced by the complainant from said Clay county field is sold by it to said Peoples and delivered at the corporate limits of the city of Manchester, in the county of Clay, in the state of Kentucky, pursuant to a written contract, dated the 18th day of April, 1931, entered into between said Peoples and the complainant, a true copy whereof, marked "Exhibit I", is hereto attached, referred to and made part hereof. Said contract last mentioned was modified by another written contract, dated the 1st day of December, 1932, entered into between said Peoples and the complainant, a true copy whereof, marked "Exhibit J", is hereto attached, referred to and made part hereof.

[fol. 6] A part of said gas produced by the complainant from said Clay county field is sold by it to said Peoples and delivered at the corporate limits of the city of Somerset, in the county of Pulaski, in the state of Kentucky, pursuant to a written contract, dated the 1st day of November, 1932, entered into between said Peoples and the complainant, a true copy whereof, marked "Exhibit K", is hereto attached, referred to and made part hereof. The said contract last mentioned was modified from June 1, 1933, to June 1, 1938, and thereafter to June 1, 1941 (but the modifications were not formally documented), to pro-

vide for a price of 25¢ per Mcf for gas distributed for commercial and industrial use.

Part of said gas so produced by the complainant from said Clay county field is sold by it to said Peoples and delivered at the corporate limits of the town of Burning Springs, in the county of Clay, in the state of Kentucky, at the price of 25¢ per Mcf. The said arrangement last mentioned is not formally documented.

Part of the said gas produced by the complainant from said Clay county field is sold by it to Edwards & Eversole Gas Company, a co-partnership composed of P. P. Edwards and R. C. Eversole, and delivered at the corporate limits of the city of London, in the county of Laurel, in the state of Kentucky, pursuant to a written contract, dated the 3rd day of July, 1935, entered into between said co-partnership and the complainant, a true copy whereof, marked "Exhibit L", is hereto attached, referred to and made part hereof.

In order to make deliveries as aforesaid of the complainant's said natural gas so sold to said Central, Peoples and Edwards & Eversole Gas Company, the complainant has constructed or purchased and maintains transmission lines [fol. 7] as follows:

(1) From said Owsley-Jackson-Clay county fields, to the corporate limits of said city of Lexington, with branch lines to the corporate limits of said cities of Richmond and Irvine.

(2) From said Clay county field to the corporate limits of said city of Somerset, with branch lines to the corporate limits of said cities of Manchester and London and said town of Burning Springs.

(3) From said Knox county field to the corporate limits of said cities of Barbourville and Corbin.

The said transmission lines are of metal pipe buried in the ground and laid through lands pursuant to grants from the land owners, commonly called "rights-of-way", of which Exhibits M and N hereto attached, referred to and made part hereof are typical. The said transmission lines separately mentioned in sub-paragraphs (1), (2) and (3) last above are not inter-connected and are independently operated.

The complainant does not sell nor offer to sell natural gas to the public; nor does it transmit nor offer to transmit

natural gas for the public; nor does it transmit gas for any other. All gas passing through its said transmission lines is owned exclusively by the complainant, and is produced by the complainant as aforesaid save for small quantities purchased as aforesaid in said Knox county field.

The said gas so sold and delivered to said Central by the complainant at the corporate limits of said city of Lexington pursuant to said contract, Exhibit B, is distributed by said Central in said city pursuant to a franchise granted by said city to said Central, a true copy whereof, marked [fol. 8] "Exhibit O", is hereto attached, referred to and made part hereof. The said franchise was so granted pursuant to the authority conferred on said city by section 164 of the Constitution of the state of Kentucky, after due advertisement, said Central having been the highest and best bidder therefor, and its bid therefor having been accepted by said city. The said franchise became effective from the 28th day of January, 1927, for the term of twenty years thence ensuing. The said franchise, (sections 4, 7, 24 and 25, inter alia) reserved to the parties thereto, that is, the said city of Lexington and said Central, the right to fix the rates to be charged by said Central for gas distributed in said city pursuant to said franchise. Afterwards, on the 7th day of May, 1934, the said city pursuant to said reserved right, by authority of said section 164, in reference to said franchise, in its proprietary capacity, entered into a contract with said Central, fixing the rates to be charged by said Central for gas distributed in said city pursuant to said franchise, effective until the 1st day of March, 1939. A true copy of said contract, marked "Exhibit P", is hereto attached, referred to and made part hereof. This is the same contract affirmed by the Court of Appeals of Kentucky in the cases of said Central versus said city and others and said Central versus Wright, decided September 27, 1935, and reported in 260 Ky. 361, 85 S. W. (2d) 870, and by the Supreme Court of the United States in the case of Wright and another versus said Central and others, decided March 16, 1936, and reported in 297 U. S. 537, 80 L. ed. 850. On the 21st day of May, 1934, said city amended said franchise so as to conform with said contract with respect to said rates. A true copy of the amendatory ordinance, marked "Exhibit Q", is hereto attached, referred to and made part hereof.

[fol. 9] The said gas so sold and delivered to said Central by the complainant at the corporate limits of said city of Richmond, pursuant to said contract, Exhibit C, is distributed by said Central in said city pursuant to a franchise granted by said city to said D. L. Johnson, and his assigns, a true copy whereof, marked "Exhibit R", is hereto attached, referred to and made part hereof. The said franchise was so granted pursuant to the authority conferred on said city by said section 164, after due advertisement, said grantee having been the highest and best bidder therefor, and his bid therefor having been accepted by said city. Said franchise became effective from the 5th day of April, 1928, for the term of twenty years thence ensuing; and by mesne assignments has come to vest in said Central. At the same time, the said city of Richmond, pursuant to said section 164, in reference to said franchise and as parcel thereof (section e inter alia), in its proprietary capacity, entered into a contract with the said grantee, fixing the rates to be charged by said grantee and his assigns for gas distributed in said city pursuant to said franchise, effective during the term thereof.

Said gas so sold and delivered to said Central by the complainant at the corporate limits of said city of Irvine, pursuant to said contract, Exhibit C, is distributed by said Central in said city and in the city of Ravenna adjacent thereto, in the said county of Estill.

The said distribution by said Central in said city of Irvine is pursuant to a franchise granted by said city to said D. L. Johnson and his assigns, a true copy whereof, marked "Exhibit S", is hereto attached, referred to and made part hereof. Said franchise was so granted pursuant to the [fol. 10] authority conferred on said city by said section 164, after due advertisement, said grantee having been the highest and best bidder therefor and his bid therefor having been accepted by said city. Said franchise became effective on the 13th day of April, 1927, for a term of twenty years thence ensuing; and by mesne assignments has come to vest in said Central. At the same time, the said city of Irvine, pursuant to said section 164, in reference to said franchise and as parcel thereof (section 4 (b) inter alia), in its proprietary capacity, entered into a contract with the said grantee, fixing the rates to be charged by said grantee and his assigns for gas distributed in said city pursuant to said franchise, effective during the term thereof.

The said distribution by said Central in said city of Ravenna is pursuant to a franchise granted by said city to said D. L. Johnson and his assigns, a true copy whereof, marked "Exhibit T", is hereto attached, referred to and made part hereof. Said franchise was so granted pursuant to the authority conferred on said city by said section 164, after due advertisement, said grantee having been the highest and best bidder therefor, and his bid therefor having been accepted by said city. Said franchise became effective on the 10th day of February, 1927, for a term of twenty years thence ensuing; and by mesne assignments has come to vest in said Central. At the same time, the said city of Ravenna, pursuant to said section 164, in reference to said franchise and as parcel thereof (section 4 (b) inter alia), in its proprietary capacity, entered into a contract with the said grantee, fixing the rates to be charged by said grantee and his assigns for gas distributed in said city pursuant to said franchise, effective during the term thereof.

[fol. 11] The said gas so sold and delivered to said Peoples by the complainant at the corporate limits of said city of Barbourville, pursuant to said contract, Exhibits D and E, is distributed by said Peoples in said city pursuant to a franchise granted by said city to Barbourville Supply Company, a corporation, and its assigns, a true copy whereof, marked "Exhibit U", is hereto attached, referred to and made part hereof. Said franchise was so granted pursuant to the authority conferred on said city by said section 164, after due advertisement, said grantee having been the highest and best bidder therefor, and its bid therefor having been accepted by said city. Said franchise became effective on the 9th day of August, 1921, for a term of twenty years thence ensuing; and by mesne assignments has come to vest in said Peoples. At the same time, the said city of Barbourville, pursuant to said section 164, in reference to said franchise and as parcel thereof (section 5, inter alia), in its proprietary capacity, entered into a contract with the said grantee, fixing the rates to be charged by said grantee and its assigns, for gas distributed in said city pursuant to said franchise, effective during the term thereof.

The said gas so sold and delivered to said Peoples by the complainant at the corporate limits of said city of Corbin pursuant to said contract, Exhibits F, G and H, is distributed by said Peoples in said city pursuant to franchises granted by said city as follows:

(1) To C. R. Luker and his assigns, a true copy whereof, marked "Exhibit V", is hereto attached, referred to and made part hereof. Said franchise was so granted pursuant to the authority conferred on said city by said section 164, after due advertisement, said grantee having been the high-[fol. 12] est and best bidder therefor, and his bid therefor having been accepted by said city. Said franchise became effective on the 1st day of May, 1928, for a term of twenty years thence ensuing; and by mesne assignments has come to vest in said Peoples. At the same time, the said city of Corbin, pursuant to said section 164, in reference to said franchise and as parcel thereof (section (10) inter alia), in its proprietary capacity, entered into a contract with the said grantee, fixing the rates to be charged by said grantee and his assigns, for gas distributed in said city pursuant to said franchise, effective during the term thereof.

(2) To the complainant and its assigns, a true copy whereof, marked "Exhibit W", is hereto attached, referred to and made part hereof. Said franchise was so granted pursuant to the authority conferred on said city by said section 164, after due advertisement, the complainant having been the highest and best bidder therefor, and its bid therefor having been accepted by said city. Said franchise became effective on the 10th day of June, 1930, for a term of twenty years thence ensuing; and by mesne assignment has come to vest in said Peoples. At the same time, the said city of Corbin, pursuant to said section 164, in reference to said franchise and as parcel thereof (section (11) inter alia), in its proprietary capacity, entered into a contract with the complainant, fixing the rates to be charged by said complainant and its assigns for gas distributed in said city pursuant to said franchise, effective during the term thereof.

[fol. 13] (3) To the complainant and its assigns, a true copy whereof, marked "Exhibit X", is hereto attached, referred to and made part hereof. Said franchise was so granted pursuant to the authority conferred on said city by said section 164, after due advertisement, the complainant having been the highest and best bidder therefor, and its bid therefor having been accepted by said city. Said franchise became effective on the 20th day of January, 1931, for a term of twenty years thence ensuing; and by mesne

assignment has come to vest in said Peoples. At the same time the said city of Corbin, pursuant to said section 164, in reference to said franchise and as parcel thereof (section (11) inter alia), in its proprietary capacity, entered into a contract with the complainant, fixing the rates to be charged by said complainant and its assigns for gas distributed in said city pursuant to said franchise, effective during the term thereof.

The said gas so sold and delivered to said Peoples by the complainant at the corporate limits of said city of Manchester, pursuant to said contract, Exhibits I and J, is distributed by said Peoples in said city pursuant to a franchise granted by said city to the complainant and its assigns, a true copy whereof, marked "Exhibit Y", is hereto attached, referred to and made part hereof. Said franchise was so granted pursuant to the authority conferred on said city by said section 164, after due advertisement, the complainant having been the highest and best bidder therefor, and its bid therefor having been accepted by said city. Said franchise became effective on the 24th day of February, 1931, for a term of twenty years thence ensuing; and by mesne assignment has come to vest in said Peoples. At the [fol. 14] same time, the said city of Manchester, pursuant to said section 164, in reference to said franchise and as parcel thereof (section (10) inter alia), in its proprietary capacity, entered into a contract with the complainant, fixing the rates to be charged by it and its assigns for gas distributed in said city pursuant to said franchise, effective during the term thereof.

The said gas so sold and delivered to said Peoples by the complainant at the corporate limits of said city of Somerset, pursuant to said contract, Exhibit K, is distributed by said Peoples in said city pursuant to a franchise granted by said city to W. H. Young and his assigns, a true copy whereof, marked "Exhibit Z", is hereto attached, referred to and made part hereof. Said franchise was so granted pursuant to the said authority conferred by said section 164, after due advertisement, the said grantee having been the highest and best bidder therefor, and his bid therefor having been accepted by said city. Said franchise became effective on the 8th day of August, 1932, for a term of twenty years thence ensuing; and by mesne assignment has come to vest in said Peoples. At the same time, the said

city of Somerset, pursuant to said section 164, in reference to said franchise and as parcel thereof (section (11) inter alia), in its proprietary capacity, entered into a contract with the said grantee, fixing the rates to be charged by said grantee and his assigns for gas distributed in said city pursuant to said franchise, effective during the term thereof.

The said gas so sold and delivered to said Edwards & Eversole Gas Company by the complainant at the corporate limits of said city of London, pursuant to said contract, [fol. 15] Exhibit L, is distributed by said Edwards & Eversole Gas Company in said city pursuant to a franchise granted by said city to C. R. Luker and his assigns, a true copy whereof, marked "Exhibit AA", is hereto attached, referred to and made part hereof. The said franchise was so granted pursuant to the authority conferred on said city by said section 164, after due advertisement, said grantee having been the highest and best bidder therefor, and his bid therefor having been accepted by said city. Said franchise became effective on the 8th day of September, 1928, for a term of twenty years thence ensuing; and by mesne assignments has come to vest in said Edwards & Eversole Gas Company. At the same time, the said city of London, pursuant to said section 164, in reference to said franchise and as parcel thereof (section 10 inter alia), in its proprietary capacity, entered into a contract with the grantee, fixing the rates to be charged by said grantee and his assigns for gas distributed in said city pursuant to said franchise, effective during the term thereof.

The said gas so sold and delivered to said Peoples by the complainant at the corporate limits of said town of Burning Springs, is distributed by said Peoples in said town without, so far as is known to the complainant, any formal franchise therefor.

Said Peoples has outstanding 1,280 shares of its common capital stock of the par value of \$25.00 each, of which the complainant is the owner of 1,000 shares. So far as is known to the complainant, the remaining 280 shares of said outstanding stock are owned as follows:

[fol. 16]

Stockholder	Address	Shares
John T. Bishop, Jr.	Basin, Wyoming	20
Marion C. Bishop	"	20

Stockholder	Address	Shares
Helen Goodwin	Care Mrs. E. A. Durham, Sistersville, W. Va.	15
Mary V. Fisk	"	15
Elizabeth Brand	"	15
Ada B. Durham	Sistersville, W. Va.	50
Marjorie D. McLain	Garden City, N. Y.	20
E. Arthur Durham, Tr.	Sistersville, W. Va.	25
Edwin A. Durham, Inc.	"	100

Said Peoples is indebted to the complainant in the sum of some \$200,000.00.

No affiliation, domination or control whatsoever, direct or indirect, immediate, intermediate or remote, exists or has ever existed between the complainant and (1) said Central, or (2) said D. L. Johnson, or any of his assigns, or (3) said Edwards & Eversole Gas Company, or either of said members thereof. Each of the said contracts between the complainant and (1) said Central, Exhibit B, (2) said D. L. Johnson, Exhibit C, and (3) said Edwards & Eversole Gas Company, Exhibit L, was negotiated and entered into between strangers at arm's length.

The General Assembly of the Commonwealth of Kentucky passed an act (1934, c. 145; as amended 1936, c. 92—Ky. Stat. 3952-1 to 3952-61, inclusive) originally effective on the 14th day of June, 1934, establishing the said Commission and giving it regulatory authority in the public interest over certain "utilities" therein defined, inter alia, as follows (Ky. Stat. 3952-1 (c)):

[fol. 17] " * * * corporations * * * that now or may hereafter own, control, operate or manage * * * any facility used or to be used for or in connection with the production, manufacture, storage, distribution, sale or furnishing to or for the public for compensation natural or manufactured gas, or a mixture of the same, for light, heat, power or other uses; any facility used or to be used for or in connection with the transporting or conveying of gas, crude oil or other fluid substance by pipe line to or for the public for compensation; * * *"

Said act further provides (Ky. Stat. 3952-27):

"The commission shall have power, under the provisions of this act, to enforce, originate, establish, change and pro-

mulgate any rate, rates, joint rates, charges, tolls, schedules or service standards of any utility, subject to the provisions of this act, that are now fixed or that may in the future be fixed, by any contract, franchise or otherwise, between any municipality and any such utility, and all rights, privileges and obligations arising out of any such contracts and agreements regulating any such rates, charges, schedules or service standards shall be subject to the jurisdiction and supervision of the commission; provided, however, that no such rate, charge, schedule or service standard shall be changed, nor any contract or agreement effecting same shall be abrogated or changed until [fol. 18] and after a hearing has been had before the commission in the manner prescribed in this act.

“Nothing in this section or elsewhere in this act contained is intended or shall be construed to limit or restrict the police jurisdiction, contract rights, or powers of municipalities or political subdivisions, except as to the regulation of rates and service, exclusive jurisdiction over which is lodged in the Public Service Commission.”

The said provision of said act last above quoted insofar as it seeks to limit the power of a municipality to contract, in its proprietary capacity, with a utility, in reference to a franchise granted to such utility, with respect to rates, is contrary to sections 163 and 164 of the Constitution of Kentucky (as construed in numerous decisions of the Court of Appeals of Kentucky) vesting in cities and towns exclusive authority to grant franchises for the use of their streets, alleys and other public grounds for the distribution of gas and other commodities, and to contract in a proprietary capacity with the grantee, in reference to any such franchise, with respect to rates.

Said provision of said act last above quoted insofar as it undertakes to vest in said Commission regulatory jurisdiction of the rates to be charged by said Central in said city of Lexington, said city of Richmond, said city of Irvine and said city of Ravenna, and by said Peoples in said city of Barbourville, said city of Corbin, said city of Manchester and said city of Somerset and by said Edwards & Eversole Gas Company in said city of London, impairs the obligation of the several rate contracts entered into respectively between said cities and said distributors, in reference to their respective franchises, being said Exhibits

O, P, Q, R, S, T, U, V, W, X, Y, Z and AA, in contravention of the contract clause (article 1, section 10, clause 1) of the Constitution of the United States, and the contract clause (section 19) of the Constitution of Kentucky.

On the — day of —, 1937, the said Commission served on the complainant by registered mail a copy of an order whereof the following is a true copy:

“BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY

“A meeting of the Public Service Commission was this day held; present: Commissioners Cammack and McGregor.

• • • • •

Case No. 396

In the Matter of Investigation on Motion of the Commission of the Rates, Rules and Practices of the Petroleum Exploration, Inc.

“Notice of Investigation and Order to Show Cause

“Whereas, An examination of the reports of several wholesale and retail gas utilities serving in this state, show that they purchase gas at wholesale rates from the Petroleum Exploration, Inc., Lexington, Kentucky; and

“Whereas, The Commission has found under Sections 3952-1-12-13, and 14 that the Petroleum Exploration, Inc., is an operating utility in the State of Kentucky, and subject to the jurisdiction of this Commission; and

“Whereas, It is apparent from a comparison of these rates with those of other companies rendering a similar [fol. 20] class of service in Kentucky that these rates may be excessive; and

“Whereas, These wholesale rates bear a definite relationship to the cost of gas to consumers in the following towns and communities, namely, Corbin, Somerset, Barbourville, Manchester, Burning Springs, Richmond, Irvine-Ravenna, London, Winchester, Mt. Sterling, Cynthiana, Georgetown, Lexington, Paris, Frankfort, Versailles, Midway, and North Middletown; and

“Whereas, Authority to initiate this investigation is vested in the Commission by Sections 3952-12-13, and 14 of the Kentucky Statutes,

"Now, Therefore, Notice is Hereby Given, That the Commission has entered upon an investigation of the above matters and that a public hearing will be held relative to said matters at the office of the Commission on June 29, 1937, at which time and place any person interested may appear and present such evidence as may be proper in the premises; and

"Whereas, Under such circumstances the Commission finds the burden of proof upon the utility to show that rates and charges are fair and reasonable, and not arbitrary.

"Now, Therefore, it is Ordered:

"1. That official representatives of the Petroleum Exploration, Inc., appear at such hearing and present evidence, if any it can, as will show conclusively the fairness and reasonableness of its present rates and charges for gas which [fol. 21] it is selling to companies that are in turn selling the same gas at wholesale or retail in this state, or submit for the approval of the Commission such changes and revisions as will make such rates or charges fair and reasonable.

"2. That the Petroleum Exploration, Inc., submit at such hearing, a complete statement of all contracts, agreements, and working arrangements between said company and any corporation, partnership, trust, association, or person which controls, directly or indirectly, said company, or which is under domination and control of the interests which control Petroleum Exploration, Inc.

"3. That the Petroleum Exploration, Inc., file with the Commission on or before June 29, 1937, a complete and accurate statement of charges appearing on the books of said company for the years 1934, 1935 and 1936, representing payments made or obligations incurred by said company to any such corporation, partnership, trust, association, or person as defined under (2) above, together with the name and address of the party with whom said charge first originated and the actual cost to such party for rendering the service for which said charge was made, and a detailed explanation of the nature of the service performed and by whom performed. Said statement shall include a detailed [fol. 22] classification of such charges showing separately each class of service and the charges therefor and amounts cleared to each account.

"4. That all books, accounts, records, correspondence and memoranda of the Petroleum Exploration, Inc., be made available for examination by the Commission's representatives.

"Notice is Hereby Given to the Petroleum Exploration, Inc., of the above order of the Commission.

"Dated at Frankfort, Kentucky, this 29th day of May, 1937.

(S.) Chas. J. White, Secretary. (Seal.)"

There is not now and never was any contract, agreement or working arrangement as mentioned in paragraph "2" of the above-quoted order; nor any charge, payment or obligation as mentioned in paragraph "3" thereof.

On the 29th day of June, 1937, complainant by its agents and attorneys appeared before the said Commission and tendered a plea to its jurisdiction, a copy whereof, marked "Exhibit BB", is hereto attached, referred to and made part hereof. Nothing in the way of traverse or avoidance was filed or testified to in opposition to said plea. Notwithstanding, by order entered on or as of said 29th day of June, 1937, said plea was summarily overruled. Thereafter a copy of said order last mentioned was served by the said Commission on the complainant by registered mail on the 3rd day of July, 1937, whereof the following is a true copy:

[fol. 23] "BEFORE THE PUBLIC SERVICE COMMISSION OF
KENTUCKY

"A meeting of the Public Service Commission was held on this date; present: Chairman Beckham, Commissioners Cammack and McGregor.

• • • • •

Case No. 396

In the Matter of Investigation on Motion of the Commission of the Rates, Rules and Practices of the Petroleum Exploration, Inc.

"Order

"This cause coming on to be heard on the plea of the Petroleum Exploration, Inc., to the jurisdiction of the Com-

mission and it appearing to the Commission that the Petroleum Exploration, Inc., is engaged in the business of producing, selling and delivering natural gas to various utility companies, which sell and distribute the same to the public in Corbin, Somerset, Barbourville, Manchester, Burning Springs, Richmond, Irvine, Ravenna, London, Winchester, Mt. Sterling, Cynthiana, Georgetown, Lexington, Paris, Frankfort, Versailles, Midway, and North Middletown, all of which towns and all communities are in Kentucky; and it further appearing that the Petroleum Exploration, Inc., owns, controls, operates, and manages facilities used in connection with the production, storage, distribution, sale, and furnishing to and for the public for compensation natural gas for light, heat, power, and other purposes and owns and controls facilities used in connection with the transporting and conveying of gas by pipe line to and for the public for compensation; and it further appearing that the Petroleum [fol. 24] Exploration, Inc., is a 'utility' under sections 3952-1-12-13-14 of the Kentucky Statutes; and the Commission being advised,

"It is Ordered, That the plea to the jurisdiction of the Public Service Commission by the Petroleum Exploration, Inc., be and hereby it is overruled and that the demurrer to the jurisdiction of the Public Service Commission by the Petroleum Exploration, Inc., be and hereby it is overruled and that this action be and hereby it is set down for formal hearing on Thursday, July 29, 1937, at 10:00 A. M., on the notice of investigation and order to show cause issued by the Commission herein on May 29, 1937, to all of which the Petroleum Exploration, Inc., objects and excepts.

"This the 29th day of June, 1937.

"Public Service Commission of Kentucky, (S.) J. C. W. Beckham, Chairman. (S.) James W. Cammack, Jr., Commissioner. (S.) Thos. B. McGregor, Commissioner. (Seal.)

Attest: (S.) Chas. J. White, Secretary."

Thereafter, on the 20th day of July, 1937, pursuant to the provisions of said act (Ky. Stat. 3952-36), the complainant again appeared before said Commission, by its attorney, and filed its application for a rehearing, together with an

amended and supplemental plea to the jurisdiction of said Commission. True copies of said application, marked "Exhibit CC", and of said amended and supplemental plea, [fol. 25] marked "Exhibit DD", are hereto attached, referred to and made part hereof.

Though the said Commission has not yet ruled upon said application and amended and supplemental plea, so the complainant is informed and believes, said Commission intends and threatens, said application and amended and supplemental plea notwithstanding, to proceed with said unlawful, unreasonable and useless investigation, case No. 396, on the 29th day of July, 1937, and thereafter.

It is the obvious purpose of the said Commission to attempt to lower some or all of the prices at which the complainant, pursuant to the aforesaid contracts, sells and delivers gas to said Central, said Peoples and said Edwards & Eversole Gas Company, respectively, as none of the latter has been made party to said attempted investigation, case No. 396, as would be the case if the said Commission contemplated attempting to raise some or all of said prices. The complainant is the sole respondent to said attempted investigation, case No. 396.

The said Commission is without power to reduce the said prices for said gas so sold and delivered to said Central for distribution in said cities of Lexington, Richmond, Irvine and Ravenna; to the said Edwards & Eversole Gas Company for distribution in said city of London; and to said Peoples for distribution in said cities of Barbourville, Corbin, Manchester and Somerset, the distribution rates wherefor are fixed by said contracts not subject to the regulatory jurisdiction of the said Commission as hereinabove set forth, as any reduction of any of the said prices so charged by the complainant to the said respective distributors for said gas so sold and delivered would not be in the public [fol. 26] interest or for the public benefit but solely for the private interest and benefit of said respective distributors, or some of them, thereby (1) depriving the complainant of its property without due process of law and denying to it the equal protection of the laws contrary to the 14th amendment (section 1) of the Constitution of the United States, and (2) impairing the obligation of its several contracts, above mentioned, for the sale and delivery of said gas to said respective distributors contrary to the said contract clauses of the Constitutions of the United States and Kentucky.

Independently of said respective contracts fixing the distribution rates for gas in said cities of Lexington, Richmond, Irvine and Ravenna of said Central and in said city of London of said Edwards & Eversole Gas Company, the said respective contracts between the complainant and each of said distributors for the sale and delivery of gas for such distribution are not subject to the regulatory jurisdiction of said Commission, and any reduction of any of the prices fixed by said last mentioned contracts would deprive the complainant of its property without due process of law, deny it the equal protection of the laws, and impair the obligation of its said contracts, contrary to the constitutional limitations aforesaid.

Independently of said respective contracts fixing the distribution rates for gas in said cities of Barbourville, Corbin, Manchester and Somerset of said Peoples, the said respective contracts between the complainant and said distributor for the sale and delivery of gas for such distribution are not subject to the direct regulatory jurisdiction of said Commission.

[fol. 27] As stated above, the complainant delivers gas at the corporate limits of said cities of Corbin, Somerset, Barbourville, Manchester, Richmond, Irvine, Ravenna, London and Lexington and of said town of Burning Springs, at wholesale for distribution therein by the respective local utilities above named. It does not deliver gas at or for distribution in said "towns and communities" of Winchester, Mt. Sterling, Cynthiana, Georgetown, Paris, Frankfort, Versailles, Midway, or North Middletown, as set forth in said Commission's orders above quoted.

The complainant's remaining investment in its said natural gas production and transmission properties amounts to a large sum, in round numbers, \$1,500,000.00, and the actual value of said properties exceeds said sum.

The cost and expense to the complainant to "show conclusively the fairness and reasonableness of its present rates and charges for gas" as required by said order of May 29, 1937, above quoted, giving "due consideration to (its) * * * history and development * * * and its property, original cost, cost of reproduction as a going concern, and other elements of value recognized by the law of the land for rate making purposes" as required by said act (Ky. Stat. 3952-19), would be, in round numbers, the sum of \$25,000.00.

The said investigation, case No. 396, and the said orders entered therein, that is, of the 29th days of May and June, respectively, 1937, above quoted, are unlawful, unreasonable and arbitrary; and if said investigation and said orders are further prosecuted the complainant will be put to unlawful and needless expense in a great sum, to-wit, the sum of \$25,000.00, for the recovery of which it will have no [fol. 28] adequate remedy and its loss thereby occasioned will be irreparable. The pretended findings in said orders are arbitrary and are not based upon any evidence adduced before the said Commission after notice to the complainant.

Fourth

The said Central Kentucky Natural Gas Company (herein sometimes called "Central") is a corporation organized and existing solely under the laws of the state of Kentucky with an office at said city of Lexington, in the eastern district of Kentucky. The said Peoples Gas Company of Kentucky (herein sometimes called "Peoples") is a corporation organized and existing solely under the laws of the state of Delaware, duly authorized and qualified to hold property and do business as a foreign corporation in the state of Kentucky, with an office in said city of Lexington, in the eastern district of Kentucky. Each of said P. P. Edwards and R. C. Eversole, composing said co-partnership, Edwards & Eversole Gas Company, is a citizen of the state of Kentucky and a resident of the eastern district of Kentucky. The complainant is not advised that any of them is a necessary party to this suit but offers to implead all or any of them herein should the Court so direct.

Fifth

Wherefore, the complainant prays:

(1) That the Court do issue its writ of subpoena, in due form of law and according to the course and practice of the Court, directed to the said Public Service Commission of Kentucky, J. C. W. Beckham, Thos. B. McGregor and James W. Cammack, Jr., the defendants as aforesaid, commanding them and each of them at a certain day and under a certain penalty to be therein specified to appear before [fol. 29] the Court to answer under oath all and singular the matters and things hereinbefore set forth and com-

plained of and to stand by and abide and perform all the orders and decrees of the Court herein.

(2) That the Court do grant the complainant its writ of injunction, during the pendency hereof and perpetually thereafter, directed against the said Public Service Commission of Kentucky, and said J. C. W. Beckham, Thos. B. McGregor, and James W. Cammack, Jr., as members thereof, their attorneys and agents, and all other persons acting under their authority, from further prosecuting against the complainant the said attempted investigation, case No. 396, severally in respect of:

(a) The price for gas charged by the complainant to said Central according to the terms and provisions of said contract (Lexington) of the 24th day of March, 1927, said Exhibit B.

(b) The price for gas charged by the complainant to said Central according to the terms and provisions of said contract (Richmond, Irvine and Ravenna) of the 7th day of December, 1927, said Exhibit C.

(c) The price for gas charged by the complainant to said Peoples according to the terms and provisions of said contract (Barbourville) of the 17th day of September, 1930, said Exhibit D, as modified as aforesaid.

(d) The price for gas charged by the complainant to said Peoples according to the terms and provision- of said contract (Corbin) of the 17th day of December, 1930, said Exhibit F, as modified as aforesaid.

(e) The price for gas charged by the complainant to said Peoples according to the terms and provisions of said contract [fol. 30] tract (Manchester) of the 18th day of April, 1931, said Exhibit I, as modified as aforesaid.

(f) The price for gas charged by the complainant to said Peoples according to the terms and provisions of said contract (Somerset) of the 1st day of November, 1932, said Exhibit K, as modified as aforesaid.

(g) The price for gas charged by the complainant to said Edwards & Eversole Gas Company according to the terms and provisions of said contract (London) of the 3rd day of July, 1935, said Exhibit L.

(3) That pending the hearing for an interlocutory injunction the Court do grant to the complainant a temporary order directed against the said Public Service Commission of Kentucky and said J. C. W. Beckham, Thos. B. McGregor, James W. Cammack, Jr., as members thereof, their attorneys and agents, and all other persons acting under their authority, restraining them as aforesaid.

(4) That said order of said Commission of or as of the 29th day of June, 1937, above quoted, be vacated and set aside.

(5) And that the complainant may have such other and further relief as the nature of the case may require.

Petroleum Exploration, by L. E. Gregg, Secretary.
Edward C. O'Rear, Allen Prewitt, of Frankfort,
Kentucky; W. J. Brennan, of Sistersville, West
Virginia, Counsel for the Complainant.

[fol. 31] *Duly sworn to by L. E. Gregg. Jurat omitted in printing.*

[fol. 32] AGREED CONDENSED STATEMENT OF EXHIBITS TO BILL
OF COMPLAINT

EXHIBIT A

Exhibit A is a typical "oil and gas lease". By such instrument, the private land owner, as "lessor", grants unto Petroleum Exploration, a corporation, as "lessee", all the oil and gas in and under, and demises a described boundary of, land for the purpose of operating for and producing oil, gas and gasoline. The term is for a period of five years from the date of the instrument and as much longer as oil, gas or gasoline is produced from the premises, yielding the lessor one-eighth of the oil, as royalty, with the provision that if a well be found producing gas only, the lessor should be paid for gas produced at a stipulated rate annually.

EXHIBIT B

This is a written agreement made March 24, 1927, between Petroleum Exploration, a corporation organized under the laws of the State of Maine, and Central Kentucky Natural Gas Company, a Kentucky corporation. Begin-

ning within one year, Petroleum Exploration agreed to sell and deliver at the measuring station of the Central Kentucky Natural Gas Company, just outside the corporate limits of the city of Lexington, Kentucky, provided it could supply so much from its gas fields or other sources, and Central Kentucky Natural Gas Company agreed to buy, a total of 750,000,000 cubic feet of natural gas annually at the price of 40¢ per 1,000 cubic feet, payment to be made monthly. It was provided that the contract should expire February 20, 1947.

[fol. 33]

EXHIBIT C

This is a written agreement made December 7, 1927, between said Petroleum Exploration and one D. L. Johnson, of Lexington, Kentucky. As seller, Petroleum Exploration agreed to deliver to Johnson, as buyer, at the corporate limits of Irvine and Richmond 25,000,000 cubic feet of natural gas annually, subject to its obligations under its contract with the Central Kentucky Natural Gas Company, and which amount Johnson agreed to take. The stipulated price was 40¢ per 1,000 cubic feet. It was provided that the contract should terminate on February 20, 1947.

EXHIBIT D

Exhibit D is a written contract made September 17, 1930, between said Petroleum Exploration, as seller, and Peoples Gas Company, as buyer. Beginning November 1, 1930, the seller agreed to deliver to the buyer immediately without the boundaries of the corporate limits of Barbourville, Kentucky, an estimated maximum amount of 25,000,000 cubic feet of gas per year, at the price of 30¢ per 1,000 cubic feet for gas produced from the seller's Knox County, Kentucky, field and 35¢ per 1,000 cubic feet for gas produced from the seller's Clay County, Kentucky, field. Gas was to be delivered from the Clay County field only in the event of a deficiency of supply from the Knox County source. It was provided that the contract should terminate August 9, 1941.

[fol. 34]

EXHIBIT E

Exhibit E. is a written agreement made December 1, 1932, between said Petroleum Exploration and Peoples Gas Company of Kentucky. It modified Exhibit D. by re-

ducing the price of gas from Knox County from 30¢ to 25¢ per 1,000 cubic feet.

EXHIBIT F

Exhibit F. is a written agreement between said Petroleum Exploration and said Peoples Gas Company of Kentucky made September 17, 1930. Provided it could deliver so much from its Knox and Clay County natural gas fields, and as seller, Petroleum Exploration agreed to deliver to Peoples Gas Company of Kentucky, as buyer, all natural gas needed by the latter to supply its consumers in the town of Corbin, Kentucky, estimated at 100,000,000 cubic feet annually, delivery to be made at the edge of the town. For gas delivered from the seller's Knox County field the stipulated price was to be 30¢ per 1,000 cubic feet and that from the seller's Clay County field 35¢, to be delivered only in the event of a deficiency of supply from the Knox County source. Deliveries were to begin on or before January 1, 1932, and the contract was to terminate on August 8, 1950.

EXHIBIT G

Exhibit G. is a written instrument made September 29, [fol. 35] 1931, between said Petroleum Exploration and said Peoples Gas Company of Kentucky. It modified the prices fixed by Exhibit F. providing that the price for gas from the seller's Knox County field should be equivalent to 50% of the buyer's domestic rate for gas in the city of Corbin and its suburbs and not less than 15¢ per 1,000 cubic feet. The modification was to remain in effect only for one year, beginning October 1, 1931, and ending September 30, 1932.

EXHIBIT H

Exhibit H. is a written agreement between said Petroleum Exploration and Peoples Gas Company of Kentucky made May 15, 1933. It further modified Exhibit F. for sale and delivery of gas at the city limits of Corbin, Kentucky, by reducing the price of gas from the seller's Knox County field from 30¢ to 25¢ per 1,000 cubic feet.

EXHIBIT I

Exhibit I. is a written agreement made between the same parties April 18, 1931. Beginning October 1, 1931, Petro-

leum Exploration, as seller, agreed to deliver to Peoples Gas Company, as buyer, just outside the corporate boundaries of the town of Manchester, Kentucky, the amount of natural gas necessary for the purposes of the buyer in supplying its customers in said town and its suburbs. The agreed price was 30¢ per 1,000 cubic feet, and the contract was to terminate March 21, 1951.

EXHIBIT J

Exhibit J. is a written agreement between the same parties made December 1, 1932. It reduced the price of gas delivered by the seller at the city limits of Manchester, Kentucky, from 30¢ to 25¢ per 1,000 cubic feet.

[fol. 36]

EXHIBIT K

Exhibit K. is a written agreement made November 1, 1932, between said Petroleum Exploration, as seller, and said Peoples Gas Company of Kentucky, as buyer. Provided it could furnish so much from its oil and gas leaseholds in Clay County and Knox County, Kentucky, the seller agreed to deliver to the buyer at the city limits of Somerset, Kentucky, the buyer's needs and requirements of natural gas for distribution in said city. The agreed price was 30¢ per 1,000 cubic feet, beginning July 1, 1933, and ending October 31, 1937. Thereafter the seller might demand an increase, which if the buyer was not willing to concede should be determined by arbitrators in the manner provided by the contract. It was provided that the contract should terminate September 12, 1952.

EXHIBIT L

Exhibit L is a written agreement between said Petroleum Exploration, as seller, and P. P. Edwards and R. C. Eversole, as buyers, made July 3, 1935. The seller agreed to deliver to the buyer just outside the corporate limits of the town of London, Kentucky, and the buyer agreed to take 10,000,000 cubic feet of natural gas annually so long as the seller's pipe line to Somerset, Kentucky, could furnish so much after supplying said Peoples Gas Company of Kentucky. Subject to these conditions, the seller agreed to supply the buyer such additional quantities of natural gas as they might desire. The agreed price was 30¢ per 1,000 cubic feet, subject to a reduction of 5¢ for such gas the seller could

supply from its Knox County, Kentucky, gas field. Deliveries were to begin September, 1935. The contract was to terminate September 1, 1947.

[fol. 37]

EXHIBIT M

Exhibit M. is a typical form of pipe line right-of-way agreement by which for a stated consideration the land owner sold, granted and conveyed unto said Petroleum Exploration, its successors and assigns forever, the right-of-way for, and the right from time to time to lay, re-lay and maintain pipe lines over the land owner's described premises.

EXHIBIT N

Exhibit N. is the same as Exhibit M. except that it provides for arbitrating any damages which may occur to the land owner's crops and fences from the construction or operation of the pipe line.

EXHIBIT O

Lexington, Kentucky, Gas Franchise

Exhibit O. is an ordinance adopted by the Board of Commissioners of the city of Lexington, Kentucky, January 28, 1927. It directed the Mayor of the city to sell the franchise thereby created. It authorized the purchaser to occupy the streets, alleys and public places of the city of Lexington, Kentucky, with a natural or manufactured or "mixed" gas distribution system for the term of the franchise, beginning January 28, 1927, and ending 20 years thereafter. It authorized the purchaser to promulgate its rates, charges and compensation for the sale of natural gas, but provided that the city might contest the justness and reasonableness of such rates before the Railroad Commission of Kentucky as provided in Sections 201e-1 to 201e-20 of the Kentucky Statutes. Pending the determination of such controversy, it was provided that the purchaser might charge not for natural gas exceeding 50¢ per 1,000 cubic feet until the company procured additional pipe line facilities, after which [fol. 38] it might charge 60¢ per 1,000 cubic feet, but provided for impounding 10¢ thereof until the final determination of said rate controversy. It was provided that said franchise should be sold at public auction in the city of Lex-

ington, to the highest and best bidder, but for not less than \$15,000.

EXHIBIT P

Resolution No. 74

This is a written agreement in the form of a resolution adopted by the Board of Commissioners of the city of Lexington, Kentucky, May 7, 1934, between the city of Lexington, Kentucky, and the Central Kentucky Natural Gas Company, purchaser of the franchise filed as Exhibit O. It expressed the desire of said parties to settle and compromise all matters in dispute respecting the rate to be charged for gas under said franchise. It recites that this controversy had been pending in the Fayette Circuit Court, in the Railroad Commission of Kentucky, in the United States District Court and in the United States Supreme Court and was yet undetermined. It further provided as follows:

“First. That the Central Kentucky Natural Gas Company shall have the right, from and after the passage and effective date of an amendatory of said Ordinance Number 3346, conforming hereto and until March 1st., 1939, and until [fol. 39] same are altered as provided under said original franchise, or by law, and on all bills rendered, based on meter readings on and after the passage and effective date of said amendatory ordinance, to charge, demand, collect and receive for its natural gas, that may be supplied as under the terms of said franchise, the following rates for natural gas consumed in any one month:

- 50 cents for the first 100 cubic feet or less.
- 52 cents per M for the next 3900 cubic feet.
- 50 cents per M for the next 4000 cubic feet.
- 45 cents per M for the next 17000 cubic feet.
- 43 cents per M for all over 25000 cubic feet.

“In the event the Federal, State, County or Municipal Government, or any taxing district, shall impose any direct tax on the production or sale of gas, the amount of such tax or taxes paid by the Company on the production or sale of gas sold in the City of Lexington shall be apportioned, at the time of the payment thereof, among the consumers in Lexington on the basis of the amount of gas consumed by them and upon which such tax was paid, and be added to the

next monthly bills rendered to said consumers after said tax is paid.

"The Company shall have the right to charge, in addition [fol. 40] to the schedule rates hereinabove set out, three cents (3 cents) per one thousand (1,000) cubic feet or fraction thereof, if the bill for service is not paid within ten days after said bill is mailed or delivered to the customer.

"From and after March 1st., 1939, and until the expiration of said twenty year franchise contract, the Company shall have the right to charge, demand, collect, and receive for its gas service under the franchise just and reasonable rates, charges and compensation, and in the event the City and Company are unable to agree upon a rate to be charged by the Company for its gas service after the expiration of said fixed rate period, they shall proceed as provided for in Sections 201e-1 to 201e-20, inclusive, of the Kentucky Statutes, or in such other manner as the statute law may then provide, or as may be open in the Courts.

"Second. That all money now impounded under orders of said courts and in the proceedings before the Railroad Commission, shall, with the consent of said Court, or courts, or Commission, be made available and subject to the check of the Company, and by it distributed as follows:

(1) To the consumers, who paid in, at the rate of five cents per thousand cubic feet on all gas sold since December 1st., 1927.

(2) To the Company the remaining funds. Said distribution of said funds shall commence within thirty (30) [fol. 41] days from the effective date of said amendatory ordinance and be completed as soon as is practicably possible.

"The Company shall pay:

(a) All cost of distribution.

(b) To the City of Lexington to partly reimburse it for the expense of the said rate litigation, \$35,000.00.

(c) To J. A. Edge, Attorney for the Gas Consumers' League, the sum of \$22,500.00 to cover cost, fees and expenses of the League, including fees for the attorneys at Washington, D. C., who represented the League before the United States Supreme Court.

(d) All unpaid receiver or custodian fees, as finally allowed.

(e) All unpaid court costs, and costs of said proceedings before the Railroad Commission in said rate litigations; and the City is acquitted of all further liability as to costs.

(f) Any part of said impounded funds going to the consumers and unclaimed by said consumers by January 1st., 1935, shall be covered one-half thereof into the Treasury of the City of Lexington and the other half thereof to be regained by the Central Kentucky Natural Gas Company; with the understanding and agreement that as to any lawful and rightful claims therefor duly presented in the future, [fol. 42] the City and the Central Kentucky Natural Gas Company shall each pay one-half thereof.

The Company shall, at the time said refund payments are made to said customers, render to each of them an itemized statement by months showing basis of said refund. A copy of said statement shall be kept on file by the Company.

"Third. Ordinance Number 3346, pursuant to which said Company purchased its present franchise, shall be so amended as to carry into effect the terms hereof; but said ordinance shall not be so amended until the Central Kentucky Natural Gas Company and its counsel and the Gas Consumers' League and their counsel shall, by an endorsement upon a copy of this resolution, have signified its concurrence in, and its agreement to the terms and conditions in this resolution set forth.

"Fourth. Appropriate agreed orders shall be entered in said court or upon said Commission, settling and dismissing said proceeding in conformity to these terms and conditions."

EXHIBIT Q

"Ordinance No. 271

An Ordinance to Amend and Reenact Sections 4 and 7 of Ordinance No. 3346, Passed by the Board of Commissioners January 28, 1927, so as to Provide and Fix the Rate at Which Natural Gas May be Sold to the Citizens of Lexington.

[fol. 43] "Be it Ordered By the Board of Commissioners of the City of Lexington:

"Section 1. That Section 4 of Ordinance No. 3346 passed by the Board of Commissioners of the City of Lexington January 28, 1927, be, and the same hereby is, amended and reenacted so that the same, when so amended and reenacted, shall read as follows:

"Section 4. The Company shall have the right from and after the effective date of this amendatory ordinance and until March 1, 1939, and until same are altered as provided under this franchise, or by law, and on all bills rendered based on meter readings on and after the effective date of this amendatory ordinance to charge, demand, collect and receive for its natural gas that may be supplied under the terms of this franchise, the following rates for natural gas consumed in any one month:

50 cts. for the first 100 cubic feet or less.

52 cts. per M. for the next 3900 cubic feet.

50 cts. per M. for the next 4000 cubic feet.

45 cents per M. for the next 17000 cubic feet.

43 cts. per M. for all over 25000 cubic feet.

"Section 2. That Section 7 of Ordinance No. 3346 passed by the Board of Commissioners of the City of Lexington January 28, 1927, and the same hereby is, amended and [fol. 44] reenacted so that the same, when so amended and reenacted shall read as follows:

"Section 7. From and after March 1st, 1938, and until the expiration of this twenty year franchise contract, the Company shall have the right to charge, demand, collect and receive for its natural gas under the franchise just and reasonable rates, charges and compensation, and in the event the City and the Company are unable to agree upon a rate to be charged by the Company for its gas service after the expiration of said fixed rate period, they shall proceed as provided for in Sections 201e-1 to 201e-20, inclusive, of the Kentucky Statutes, or in such other manner as the statute law may then provide, or as may be open in the courts.

"3. This ordinance shall take effect ten days after the same is signed, recorded and published as required by law.

Introduced May 14th, 1934.

Passed Board of Commissioners May 21, 1934, in the same form as introduced.

W. T. Congleton, Mayor.

Attest: Ben Herr, City Clerk.

Published May 22, 1934."

EXHIBIT R

Richmond, Kentucky, Franchise

This is an ordinance adopted by the Common Council of [fol. 45] the city of Richmond, Kentucky, April 5, 1928. It defined and created a franchise for the occupancy of the streets and public places of the City of Richmond, Kentucky, with a gas distribution system for the purpose of supplying consumers with natural gas. It was to become effective April 5, 1928, and to expire February 20, 1947. It directed the Mayor to sell such franchise at public auction to the highest and best bidder. It further provided:

"Said purchaser or purchasers, successors or assigns, shall have the right to charge, receive and collect rates and charges not in excess of the following to-wit:

(1) A service charge of twenty-five (25) cents net per meter per month, said charge to cover no part of the gas consumed.

(2) Sixty-eight (68) cents per thousand for each of the first ten thousand cubic feet of gas consumed in any one month, subject to a discount of three (3) cents per thousand cubic feet, on all consumers' bills paid on or before the tenth of the month following that in which the gas shall have been delivered.

(3) Sixty-three (63) cents for each one thousand cubic feet of gas over and above the first ten thousand cubic feet consumed in any one month with a discount of (3) three cents per thousand cubic feet if consumers' bill is paid on or before the tenth of the following months."

The purchaser agreed to furnish certain specified natural gas service.

Irvine, Kentucky, Gas Franchise

This is an ordinance adopted by the city of Irvine, Kentucky, April 13, 1927. It directed the Mayor of the city to sell the franchise thereby created at public auction to the highest and best bidder, but for not less than \$100.00. It granted the purchaser the right to occupy the streets and public places of the city of Irvine with a natural or manufactured or "mixed" gas distribution system for a period of 20 years, beginning April 13, 1927. It gave the purchaser, known as "the company", the following rights during that term:

"(A) The Company shall have the right to charge, demand, collect and receive for its gas service just and reasonable rates, charges or compensation hereinafter provided.

"(B) From and after the date when this franchise becomes effective, the Company shall charge, demand, collect and receive sixty-five (65) cents per thousand cubic feet for natural gas, artificial or mixed gas consumed by the customers in the city of Irvine, Kentucky. But purchaser shall have the right to furnish said gas to any manufacturer or industrial enterprise at a less rate.

"(C) When a bill for gas service is not paid for by a customer within ten days after said bill is mailed or delivered to said customer, the Company may charge, demand, collect and receive a further sum of five (5) cents per thousand cubic feet. The rates, charges or compensation to be [fol. 47] charged, demanded, received or collected shall be net and shall not be increased by any meter rental, service charge or other device of any kind or description.

"(D) The Company shall have the right to require from each and every consumer of gas before gas service is installed a deposit of twice the amount of an estimated monthly gas bill which said deposit may be retained by the Company until gas service is discontinued, and all bills paid by the customer, or a bond or other security, as the Company may determine, to guarantee the payment of any such gas bill or bills. The Company shall have the right to discontinue the service to any customer who fails to pay his

bills within ten (10) days after said account is due and the bill has been rendered.

“(E) The Company shall not be required to bear the expense of making service connections from their main lines located at the curbs, or in the alleys as the case may be; to the property of the customer, but shall have the right at the time such connection is being made to thoroughly inspect the service and meter. Then and thereafter the Company shall at all times have the right to inspect such service lines, meters and to read and repair same when necessary.”

The purchaser agreed to furnish certain specified gas service.

EXHIBIT T

Ravenna, Kentucky, Gas Franchise

[fol. 48] This is an ordinance adopted by the Board of Councilmen of the city of Irvine, Kentucky, on February 10, 1927. It directed the Mayor of the city to sell at public auction to the highest and best bidder, but for not less than \$100.00, the franchise thereby created. For a period of 20 years from February 10, 1927, it authorized the purchaser of the franchise, known as “the company”, to occupy the streets and public places of the town with a natural gas or manufactured or “mixed” gas distribution system. During that time, it gave the purchaser or company the following rights:

“(A) The Company shall have the right to charge, demand, collect and receive for its gas service just and reasonable rates, charges or compensation hereinafter provided.

(B) From and after the date when this franchise becomes effective the Company shall charge, demand, collect and receive sixty-five cents per thousand cubic feet for natural gas consumed by its customers in the City of Ravenna, Kentucky.

(C) When a bill for gas service is not paid by a customer within ten days after said bill is mailed or delivered to said customer, the Company may charge, demand, receive and collect a further sum of five cents per thousand cubic feet. The rates, charges, or compensation to be charged, de-

manded, received and collected shall be net and shall not be increased by any meter rental, service charge or other device of any kind or description.

[fol. 49] (D) The Company shall have the right to require from each and every customer of gas before gas service is installed, a deposit of twice the amount of an estimated monthly gas bill which said deposit may be retained by the Company until gas service is discontinued, and all bills paid by the customer, or a bond or other security, as the Company may determine, to guarantee the payment of any such gas bill or bills. The Company shall have the right to discontinue the service to any customer who fails to pay his bills within ten (10) days after said account is due and the bill has been rendered."

The purchaser agreed to furnish certain specified gas service.

EXHIBIT U

Barbourville, Kentucky, Gas Franchise

This is an ordinance adopted by the Board of Council of the city of Barbourville, Kentucky, on August 10, 1921. It created and defined the franchise for distribution of natural gas in the city of Barbourville, Kentucky, for a period of 20 years, beginning August 10, 1921. It authorized the purchaser of such franchise, to be sold at public auction by the Mayor of the town, to occupy the public streets of the town during that period. During the period of the franchise, it provided that:

"Sec. 5. The rate for natural gas under this franchise, shall at no time exceed (75¢) seventy five cents, per thousand cubic feet, and this rate shall be subject to a discount of 10¢ per thousand Cubic Feet, if the bill therefor rendered to the [fol. 50] customer be paid on or before the 10th day of the month following the month in which the gas is consumed, and for which the bill is rendered, provided however that the purchaser of this franchise, may fix exact and collect a minimum charge of \$1.50, One Dollar and Fifty Cents, from any consumer whose aggregate consumption of gas per month does not exceed 2000, Two Thousand Cubic Feet.

"Sec. 6. The rate per thousand feet of gas as herein fixed and the discount to be allowed therefrom as herein fixed, or

any rate and discount that maximum as may be hereafter fixed or determined by the purchaser shall be uniform to all customers."

The purchaser agreed to furnish certain specified gas service.

EXHIBIT V

Corbin, Kentucky, Gas Franchise (1121)

This is an ordinance finally adopted by the Board of Commissioners and Mayor of the city of Corbin, Kentucky, on May 1, 1928. It authorized the Mayor of the city to sell at public auction to the highest and best bidder, but for not less than \$100.00, the franchise thereby created. It authorized the purchaser, therein called the "Grantee", to occupy the public streets and places of the town with a natural or manufactured or "mixed" gas distribution system for a period of 20 years, beginning May 1, 1928. During such time, it provided that:

[fol. 51] "Section (9) The grantee shall have the right to charge, collect and receive for its gas service just and reasonable rates, charges or compensation therefor."

"Section (10) The grantee shall furnish gas to the said City of Corbin and the inhabitants thereof as herein provided at the rate of seventy cents (70¢), per one thousand cubic feet, same to be paid for monthly as bills are furnished, as hereinafter set forth, to the customers, and in case such bill is paid on or before the 10th of the month, succeeding the month in which the gas is consumed, the same shall be discounted at the rate of five cents (5¢) per thousand cubic feet. Said bills are payable at the office of the grantee in Corbin. Said grantee shall furnish gas to industries or factories within the said city at such rate as may be agreed upon from time to time by him and such customers."

The purchaser agreed to furnish certain specified gas service.

EXHIBIT W

Corbin, Kentucky, Gas Franchise (1205)

This was an ordinance adopted by the Board of Commissioners of the city of Corbin, Kentucky, on June 10, 1930.

It directed the Mayor of the city to sell the franchise thereby created and defined at public auction to the highest and best bidder, but for not less than \$1500.00. It authorized the purchaser, therein called the "Grantee", to occupy the streets of the city of Corbin with a natural or manufactured or "mixed" gas distribution system for a period of [fol. 52] 20 years, beginning June 10, 1930. During that time, it provided that:

"Section (10) The grantee shall furnish gas to the said City and the inhabitants thereof as herein provided at the rate of Seventy (70¢) cents for each One Thousand (1,000) cubic feet of the first 5,000 cubic feet of gas consumed in any one month, subject to a discount of five (5¢) cents per thousand cubic feet, on all consumers' bills if paid on or before the 10th of the month following that in which the gas shall have been delivered, & sixty-five (65¢) cents for each 1,000 cubic feet of gas over and above the first 5,000 cubic feet consumed in any one month, subject to a discount of five (5¢) cents per thousand cubic feet, on all consumers' bills if paid on or before the 10th of the month following that in which the gas shall have been delivered. Said bills shall be payable at the office of the grantee in Corbin. Said grantee shall furnish gas to industries or factories within the said city at such a rate as may be agreed upon from time to time by him and such customers."

The purchaser agreed to furnish certain specified gas service.

EXHIBIT X

Corbin, Kentucky, Gas Franchise (1231)

This is an ordinance adopted by the Board of Commissioners of the city of Corbin, Kentucky, on January 20, 1931. It directed the Mayor of the city to sell the gas franchise thereby created and defined at public auction to the highest and best bidder, but for not less than \$2500.00. It authorized the purchaser, therein called the "Grantee", his heirs or assigns, to occupy the streets and public places of the city for a period of 20 years from January 20, 1931, with a natural or manufactured or "mixed" gas distribution system. During that time, it also provided that:

"Section (10). The grantee shall have the right to charge, collect and receive for its gas service just and reasonable rates, charges or compensation therefor.

Section (11) The grantee shall furnish gas to the said City and the inhabitants thereof as herein provided at the rate not in excess of Seventy (70¢) cents for each One Thousand (1,000) cubic feet for the first 5,000 cubic feet of gas consumed in any one month, subject to a discount of five (5¢) cents per thousand cubic feet, on all consumers' bills if paid on or before the 10th of the month following that in which the gas shall have been delivered; and not in excess of sixty-five (65¢) cents for each 1,000 cubic feet of gas over and above the first 5,000 cubic feet consumed in any one month, subject to a discount of five (5¢) cents per thousand cubic feet, on all consumers' bills if paid on or before the 10th of the month following that in which gas shall have been delivered."

The purchaser agreed to furnish certain specified gas service.

[fol. 54]

EXHIBIT Y

Manchester, Kentucky, Gas Franchise

This is an ordinance adopted by the City Council of the town of Manchester, Kentucky, on February 24, 1931. It directed the Mayor of the town to sell the franchise thereby created at public auction to the highest and best bidder, but for not less than \$100.00. It authorized the purchaser, therein called the "Grantee", to occupy the streets and public places of the town for a period of 20 years from February 24, 1931, with a gas distribution system. During that time, it provided that:

"Section 9. The grantee shall have the right to charge, collect and receive for its gas service just and reasonable rate, charges or compensation therefor.

Section 10. The grantee shall furnish to the said city and the inhabitants thereof as herein provided at the rate of not in excess of 60 cents per thousand cubic feet, same to be paid for monthly as bills are furnished, as hereinafter set forth, to the customers, and in case such bill is paid on

or before the 10th of the month, succeeding the month in which the gas is consumed, the same shall be discounted at the rate of 5 cents per thousand cubic feet. Said bills shall be payable at the office of the grantee in Manchester. Said grantee shall furnish gas to industries or factories within the said city at such rate as may be agreed upon from time to time by him and such customers."

[fol. 55] The purchaser agreed to furnish certain specific natural gas service.

EXHIBIT Z

Somerset, Kentucky, Gas Franchise

This is an ordinance adopted by the Mayor and Board of Council of the city of Somerset, Kentucky, on August 8, 1932. It directed the Mayor of the city to sell the franchise thereby created and defined, at public auction, to the highest and best bidder, but for not less than \$300.00. It authorized the purchaser, therein called the "Grantee"; his heirs or assigns, to occupy the city streets and public places with a gas distribution system for a period of 20 years from August 8, 1932. During such time, it provided that:

"The grantee shall furnish gas to the said city and the inhabitants thereof as herein provided at a rate not in excess of seventy (70¢) cents for each 1000 cubic feet of the first two thousand (2000) cubic feet of gas consumed in any one month; and sixty-five (65) cents for each 1000 feet of the next three thousand (3000) cubic feet of gas consumed in any one month; and sixty (60¢) per 1000 cubic feet for all gas consumed in any one month over and above the first five thousand (5000) cubic feet; said above rates being subject to a discount of five (5¢) cents per thousand cubic feet on all customers' bills if paid on or before the 10th of the month following that in which the gas shall have been delivered."

The purchaser agreed to furnish certain specific natural gas service.

[fol. 56]

EXHIBIT AA

London, Kentucky, Gas Franchise

This is an ordinance adopted by the Mayor and Board of Council of the city of London, Kentucky, on September 8, 1928. It directed the Mayor of the city to sell the franchise thereby created and defined at public auction to the highest and best bidder, but for not less than \$100.00. It authorized the purchaser, therein called the "Grantee", his heirs or assigns, to occupy the city streets and public places for a period of 20 years from September 8, 1929, with a natural gas distribution system. During such time, it provided that:

"The grantee shall furnish to the said city and the inhabitants thereof as herein provided at the rate of sixty (60) cents per thousand cubic feet, same to be paid for monthly as bills are furnished, as hereinafter set forth, to the customers, and in case such bill is paid on or before the 10th of the month, succeeding the month in which the gas is consumed, the same shall be discounted at the rate of five (5¢) cents per thousand cubic feet. Said bills shall be payable at the office of the grantee in London. Said grantee shall furnish gas to industries or factories within the said city at such rate as may be agreed upon from time to time by him and such customers."

The purchaser agreed to furnish certain specified natural gas service.

[fol. 57]

EXHIBIT BB

Plea to the Jurisdiction of the Commission

This is a plea filed by the plaintiff, Petroleum Exploration, with the Public Service Commission of Kentucky protesting that the Commission did not have jurisdiction to investigate or regulate its business or to abrogate the prices it received for natural gas. Together with Exhibits CC. and DD. it set up all the material facts stated in the Bill in Equity herein. Also, it prayed of the Commission substantially the same relief prayed in the Bill in Equity.

EXHIBIT CC

Petition for Rehearing.

This is plaintiff's petition addressed to the Public Service Commission of Kentucky, asking that it rehear and set aside its order of June 29, 1937, copied in the Bill in Equity.

EXHIBIT DD

Amended and Supplemental Plea to the Jurisdiction

Plaintiff filed this plea with the Commission at the same time it filed its aforesaid petition for rehearing. See Exhibit BB.

ORDER APPROVING CONDENSED STATEMENT OF EXHIBITS—
Entered Jan. 6, 1938

The Court orders that the foregoing condensed statement of exhibits be and it is hereby approved.

Teste:

H. Church Ford, Judge.

The foregoing condensed statement of exhibits is approved.

Hubert Meredith, Atty. Gen.; J. W. Jones, Asst.
Atty. Gen., Attorneys for Defendants.

[fol. 58] IN UNITED STATES DISTRICT COURT

MOTION FOR TEMPORARY RESTRAINING ORDER—Filed July 28,
1937

Complainant, Petroleum Exploration, moves the court to grant it a temporary restraining order against the defendants, restraining them, pending further order of the court, from further proceeding against complainant in their investigation, case no. 396.

W. J. Brennan, Allen Prewitt, for Complainant.

IN UNITED STATES DISTRICT COURT

ORDER GRANTING TEMPORARY RESTRAINING ORDER—Filed
and Entered July 28, 1937

Upon plaintiff's motion, duly pursuant to notice, the Court orders that the defendants, Public Service Commission of Kentucky, et al. be and they are hereby restrained until a motion herein for a temporary injunction can be heard and determined, from proceeding further against the plaintiff in the defendant's investigation Case No. 396.

The Court has found upon the verified Bill of Complaint that irreparable injury would result to the plaintiff unless such temporary restraining order is granted, in that plaintiff would be required to expend the sum of at least Twenty-five Thousand (\$25,000.00) Dollars to comply with the defendant's orders in their said Case No. 396, dated May 29th and June 30th, 1937, respectively, for which there would be no recovery in the event plaintiff should be adjudged final relief herein.

The Court further finds that this suit requires a proceeding under Judicial Code Section No. 266, and hereby convenes a Court of three judges under said section to hear the plaintiff's motion for preliminary injunction on Saturday, August 7, 1937.

The Court fixed the plaintiff's bond upon this temporary restraining order in the penal sum of One Thousand [fol. 59] (\$1,000.00) Dollars, then came plaintiff as principal with Earl D. Wallace as surety and executed bond as required by law in said sum which the Court now examines and approves.

This July 28, 1937.

H. Church Ford, Judge.

Notice of said application for preliminary injunction on August 7, 1937, is hereby waived by the defendants and by Hubert Meredith as Attorney General of the State of Kentucky.

Hubert Meredith, by J. W. Jones, Assistant Attorney General, for Defendants.

Bond on temporary restraining order for \$1,000.00, approved and filed July 28, 1937, omitted in printing.

[fol. 60] IN UNITED STATES DISTRICT COURT

ORDER FILING ANSWER—Entered August 3, 1937

Came the defendants, by counsel, and offered for filing Answer herein, and the Court being advised, it is ordered that the said Answer be and the same is filed and noted of record.

IN UNITED STATES DISTRICT COURT

ANSWER—Filed August 3, 1937

The joint and several answer of the defendants, Public Service Commission of Kentucky, J. C. W. Beckham, Thomas B. McGregor and James W. Cammack, Jr., to the Bill of Complaint of the complainant above named respectfully shows:

I

Answering the first paragraph of the bill, defendants admit that the full name of the complainant is "Petroleum Exploration"; admit that the complainant is a corporation organized and existing solely under the laws of the state of Maine, and that its principal office in said state is 443 Congress street, in the city of Portland, in the southern division of the district of Maine; admit that the complainant is duly authorized and qualified to hold property and to do business as a foreign corporation in the state of Kentucky.

Defendants further admit that their full names are: "Public Service Commission of Kentucky", "J. C. W. Beckham", "Thomas B. McGregor" and "James W. Cammack, Jr.", and that said names are commonly used by the defendants, and that the defendants are commonly known by said names.

Defendants further admit that the Public Service Commission of Kentucky is a body corporate created and existing solely by and under the laws of the state of Kentucky, and that its principal office in said state is in the city of Frankfort, in the eastern district of Kentucky.

Defendants further admit that J. C. W. Beckham, Thomas B. McGregor and James W. Cammack, Jr., are members [fol. 61] of the Commission, and are all the members

thereof, and that each of them is a citizen of the state of Kentucky and a resident of said city of Frankfort, in the eastern district of Kentucky, and that the said J. C. W. Beckham is Chairman of the said Commission.

II

Answering the second paragraph of the bill the defendants deny that the matter in controversy herein, exclusive of interest and costs, exceeds the sum of three thousand (\$3,000.00) dollars; admit that this suit is wholly of a civil nature, and that it (a) arises under the Constitution and laws of the United States, and (b) is between citizens of different states.

III

Answering the third paragraph of the bill, defendants state that they have no knowledge, information or belief relative to the complainant being organized in 1916 for the purpose of exploring for petroleum a large area of land known as the "Miller-Prewitt-Goff (Wells Heirs)" tract, containing some 6,000 acres, more or less; situated in Lee, Wolfe, Powell and Estill counties in the state of Kentucky; state that they do not have any knowledge, information or belief relative to such exploration having proved profitable, and that the complainant continued its exploration elsewhere in the state of Kentucky, and in the course thereof discovered valuable deposits of natural gas.

The defendants admit that the complainant is now engaged in the operation of lands in Owsley, Jackson, Clay and Knox counties in the state of Kentucky, for, and the production therefrom of, natural gas; admit that said gas is contained in porous portions, sometimes called "pay-streaks", of a subterranean stratum or geological horizon [fol. 62] called the Corniferous limestone, in isolated and limited areas, sometimes called "fields", and is produced by means of wells sunk thereto from the surface; admit that complainant's rights to so operate said lands for and produce therefrom the said gas are vested in it by virtue of divers grants from the several landowners, commonly called "oil and gas leases", as exemplified by complainant's Exhibit A.

Defendants further admit that part of the said gas produced by the complainant from said fields in said Owsley,

Jackson and Clay counties is sold by it to Central Kentucky Natural Gas Company, a corporation, hereinafter sometimes called "Central", and delivered at the corporate limits of the city of Lexington, in the county of Fayette, in the state of Kentucky, pursuant to a written contract dated the 24th day of March, 1927, entered into between said Central and the complainant, as shown by a copy thereof, and identified as complainant's Exhibit B.

Defendants further admit that part of the said gas produced by the complainant from the said fields last mentioned is sold by it to said Central and delivered at the corporate limits of the city of Richmond, in the county of Madison, in the state of Kentucky, and of the city of Irvine, in the county of Estill, in the state of Kentucky, pursuant to a written contract dated the 7th day of December, 1927, entered into between one D. L. Johnson and the complainant, as shown by a copy thereof which has been identified as complainant's Exhibit C; admit that the rights of said Johnson under said contract, by virtue of mesne assignments, have come to vest in the said Central.

Defendants further admit that in addition to said gas produced by the complainant from said Knox county field it also purchases in said field like gas so produced by others [fol. 63] operating therein; admit that all of the said gas so produced from and purchased in said Knox county field is sold by the complainant to the Peoples Gas Company of Kentucky, a corporation, hereinafter sometimes called "Peoples".

Defendants further admit that a portion of said gas so produced from and purchased in said field and sold to said Peoples is delivered at the corporate limits of the city of Barbourville, in the county of Knox, in the state of Kentucky, pursuant to a written contract dated the 17th day of September, 1930, entered into between the said Peoples and complainant, as shown by a copy thereof identified as complainant's Exhibit D; admit that said contract was modified by another written contract dated December 1, 1932, entered into between the said Peoples and complainant, as shown by a copy thereof identified as Exhibit E; that said modified contract was again modified from June 1, 1933, to June 1, 1938, and thereafter to June 1, 1941, to provide for a price of eighteen (18¢) cents per 1,000 cubic feet of gas distributed for commercial and industrial use.

Defendants admit that the remainder of said gas so produced from and purchased in said Knox county field and so sold to said Peoples is delivered at the corporate limits of the city of Corbin, in the county of Whitley, in the state of Kentucky, pursuant to a written contract dated December 17, 1930, entered into between said Peoples and the complainant, as shown by a copy thereof identified as complainant's Exhibit F; admit that said contract was modified by another written contract dated September 29, 1931, entered into between the said Peoples and complainant, as shown by a copy thereof identified as complainant's Exhibit G; admit that said modified contract was further modified by another written contract dated May 15, 1933, entered into between said Peoples and the complainant, as shown by a copy thereof identified as complainant's Exhibit H; admit that [fol. 64] said contract so modified was again modified from June 1, 1933, to June 1, 1938, and thereafter to June 1, 1941, to provide for a price of eighteen (18¢) cents per 1,000 cubic feet for gas distributed for commercial and industrial use.

Defendants further admit that part of the said gas produced by the complainant from said Clay county field is sold by it to said Peoples, and delivered to the corporate limits of the city of Manchester, in the county of Clay, in the state of Kentucky, pursuant to a written contract dated the 18th day of April, 1931, entered into between said Peoples and the complainant, as shown by a copy thereof identified as complainant's Exhibit I; admit that said contract was modified by another written contract dated December 1, 1932, entered into between the said Peoples and the complainant, as shown by a copy identified as complainant's Exhibit J.

Defendants further admit that a part of said gas produced by the complainant from said Clay county field is sold by it to said Peoples and delivered at the corporate limits of the city of Somerset, in the county of Pulaski, in the state of Kentucky, pursuant to a written contract dated November 1, 1932, entered into between said Peoples and the complainant, as shown by a copy thereof identified as complainant's Exhibit K; admit that said contract was modified from June 1, 1933, to June 1, 1938, and thereafter to June 1, 1941, to provide for a price of twenty-five (25¢) cents per 1,000 cubic feet for gas distributed for commercial and industrial use.

Defendants further admit that a part of said gas so produced by the complainant from said Clay county field is

sold by it to said Peoples and delivered at the corporate limits of the town of Burning Springs, in the county of Clay, [fol. 65] in the state of Kentucky, at a price of twenty-five (25¢) cents per 1,000 cubic feet.

Defendants further admit that a part of said gas produced by the complainant from said Clay county field is sold by it to Edwards & Eversole Gas Company, a co-partnership composed of P. P. Edwards and R. C. Eversole, and delivered at the corporate limits of the city of London, in the county of Laurel, in the state of Kentucky, pursuant to a written contract dated July 3, 1935, entered into between said co-partnership and the complainant, as shown by a copy thereof identified as complainant's Exhibit L.

Defendants further admit that in order to make deliveries as aforesaid of the complainant's said natural gas so sold to said Central, Peoples and Edwards & Eversole Gas Company, the complainant has constructed or purchased and maintains transmission lines as follows:

(1) From said Owsley-Jackson-Clay county fields, to the corporate limits of said city of Lexington, with branch lines to the corporate limits of said cities of Richmond and Irvine.

(2) From said Clay county field to the corporate limits of said city of Somerset, with branch lines to the corporate limits of said cities of Manchester and London and said town of Burning Springs.

(3) From said Knox county field to the corporate limits of said cities of Barbourville and Corbin.

Defendants further admit that said transmission lines are metal pipe buried in the ground and laid through lands pursuant to grants from the landowners, commonly called "rights-of-way", as exemplified by complainant's Exhibits M and N; admit that said transmission lines separately mentioned in items (1), (2) and (3) last above are not interconnected and are independently operated.

[fol. 66] Defendants deny that the complainant does not sell nor offer to sell natural gas to the public; deny that the complainant does not transmit nor offer to transmit natural gas for the public; deny that the complainant does not transmit gas for any other. Defendants admit that all gas passing through complainant's said transmission lines is owned exclusively by the complainant and is produced by the com-

plainant as aforesaid, save for small quantities purchased as aforesaid in said Knox county field.

Defendants admit that the said gas so sold and delivered to said Central by the complainant at the corporate limits of said city of Lexington pursuant to the aforesaid contract is distributed by said Central in said city pursuant to a franchise granted by said city to said Central, as shown by a copy thereof identified as complainant's Exhibit O. Defendants admit that said franchise was so granted pursuant to the authority conferred on said city by Section 164 of the Constitution of the State of Kentucky, after due advertisement, said Central having been the highest and best bidder therefor, and its bid therefor having been accepted by said city; admit that said franchise became effective from January 28, 1927, for the term of twenty years next ensuing; deny that said franchise reserved to the parties thereto the right to fix the rates to be charged by said Central for gas distributed in said city pursuant to said franchise, but admit that said franchise attempted or purported to make such a reservation, but aver that said reservation was conditioned upon and made subject to legislation contrary or adverse thereto subsequently enacted by the Kentucky General Assembly. Defendants admit that afterwards on May 7, 1934, the said city pursuant to said purported reserved right, by authority of said Section 164, in reference to said franchise, in its proprietary capacity, entered into a contract with said [fol. 67] Central fixing the rates to be charged by said Central for gas distributed in said city pursuant to said franchise, effective until March 1, 1939, said effective date thereof and the rates fixed therein being subject, however, to subsequent legislation by the General Assembly of Kentucky and modification or regulation by any regulatory body or agency of the Commonwealth of Kentucky created by subsequent legislation. Defendants admit that a true copy of said contract is shown by complainant in Exhibit P; admit that said contract is the same contract which was affirmed by the Court of Appeals of Kentucky in the cases of Central versus said city and others and said Central versus Wright, decided September 27, 1935, and reported in 260 Ky. 361, 85 S. W. (2d) 870, and by the Supreme Court of the United States in the case of Wright and others versus said Central and others, decided March 16, 1936, and reported in 297 U. S. 537, 80 L. Ed. 850; admit that on May 21, 1934, said

city amended said franchise so as to conform with said contract with respect to said rates as shown by a copy of an ordinance identified as complainant's Exhibit Q.

Defendants admit that said gas so sold and delivered to said Central by the complainant at the corporate limits of said city of Richmond pursuant to said contract is distributed by said Central in said city pursuant to a franchise granted by said city to said D. L. Johnson and his assigns, as shown by a copy thereof identified as complainant's Exhibit R; admit that said franchise was so granted pursuant to the authority conferred upon said city by said Section 164, after due advertisement, said grantee having been the highest and best bidder therefor and his bid therefor having been accepted by said city; admit that said franchise became effective from April 5, 1938, for the term of twenty years next ensuing, and by mesne assignments has come to vest in said Central; admit that at the same time the said city of [fol. 68] Richmond pursuant to said Section 164, in reference to said franchise, and as a parcel thereof in its proprietary capacity, entered into a contract with the said grantee fixing the rates to be charged by said grantee and his assigns for gas distributed in said city pursuant to said franchise, effective during the term thereof, but aver that the rate so fixed therein and the effective period of time thereof were fixed subject to modification and regulation by any regulatory agency created and empowered by the General Assembly of Kentucky by subsequent legislation.

Defendants admit that said gas so sold and delivered to said Central by the complainant at the corporate limits of said city of Irvine pursuant to said contract between the said Central and said city is distributed by said Central in said city, and in the city of Ravenna adjacent thereto, in the said county of Estill. Defendants admit that the said distribution by said Central in said city of Irvine is pursuant to a franchise granted by said city to said D. L. Johnson and his assigns, as shown by a copy thereof identified as complainant's Exhibit S; admit that said franchise was so granted pursuant to the authority conferred on said city by said Section 164, after due advertisement, said grantee having been the highest and best bidder therefor and his bid therefor having been accepted by said city; admit that said franchise became effective on April 13, 1927, for a term of twenty years next ensuing, and by mesne assignments has

come to vest in said Central; admit that at the same time the said city of Irvine pursuant to said Section 164, in reference to said franchise, and as a parcel thereof, in its proprietary capacity, entered into a contract with the said grantee fixing the rates to be charged by said grantee and his assigns for gas distributed in said city pursuant to said franchise, effective [fol. 69] during the term thereof, but aver that the rate so fixed therein and the effective period of time thereof were fixed subject to modification and regulation by any regulatory agency created by the General Assembly of Kentucky by subsequent legislation.

Defendants further admit that said distribution by said Central and said city of Ravenna is pursuant to a franchise granted by said city to said D. L. Johnson and his assigns, as shown by a copy thereof identified as complainant's Exhibit T; admit that said franchise was so granted pursuant to the authority conferred on said city by said Section 164, after due advertisement, said grantee having been the highest and best bidder therefor and his bid therefor having been accepted by said city; admit that said franchise became effective on February 10, 192-, for a term of twenty years next ensuing, and by mesne assignments has come to vest in said Central; admit that at the same time the said city of Ravenna pursuant to said Section 164, in reference to said franchise, and as a parcel thereof, in its proprietary capacity, entered into a contract with the said grantee fixing the rates to be charged by said grantee and his assigns for gas distributed in said city pursuant to said franchise, effective during the term thereof, but aver that the rates so fixed and the effective period of time thereof were fixed subject to modification and regulation by a regulatory agency of the Commonwealth of Kentucky created and empowered by subsequent legislation.

Defendants further admit that said gas so sold and delivered to said Peoples by the complainant at the corporate limits of said city of Barbourville pursuant to said contract is distributed by said Peoples in said city pursuant to a franchise granted by said city to Barbourville Supply Company, a corporation, and its assigns, as shown by a copy thereof identified as complainant's Exhibit U; admit that said franchise was so granted pursuant to the authority conferred on said city by said Section 164, after due

advertisement, said grantee having been the highest and best bidder therefor and his bid therefor having been accepted by said city; admit that said franchise became effective on August 9, 1921, for a term of twenty years next ensuing, and by mesne assignments has come to vest in said Peoples; admit that at the same time the said city of Barbourville pursuant to Section 164, in reference to said franchise, and as a parcel thereof, in its proprietary capacity, entered into a contract with the said grantee fixing the rates to be charged by said grantee and its assigns for gas distributed in said city pursuant to said franchise, effective during the term thereof, but aver that the rates so fixed in said contract, and the effective period of time thereof, were fixed subject to modification and regulation by a regulatory agency of the Commonwealth of Kentucky created and empowered by subsequent legislation.

Defendants further admit that said gas so sold and delivered to said Peoples by the complainant at the corporate limits of said city of Corbin pursuant to said contract is distributed by said Peoples in said city pursuant to franchises granted by said city as follows:

(1) To C. R. Luker and his assigns, as shown by a copy thereof identified as complainant's Exhibit V, and that said franchise was so granted pursuant to the authority conferred on said city by Section 164, after due advertisement, said grantee having been the highest and best bidder therefor and his bid therefor having been accepted by said city and that the said franchise became effective on May 1, 1928, for a term of twenty years next ensuing, and by mesne assignments has come to vest in said Peoples; that at the same time the said city of Corbin pursuant to said Section [fol. 71] 164, in reference to said franchise, and as a parcel thereof, in its proprietary capacity, entered into a contract with the said grantee fixing the rates to be charged by said grantee and his assigns for gas distributed in said city pursuant to said franchise, effective during the term thereof, but aver that the rates so fixed and the period of time thereof were fixed subject to modification and regulation by a regulatory agency of the Commonwealth of Kentucky created and empowered by subsequent legislation.

(2) To the complainant and its assigns, as shown by a copy thereof identified as complainant's Exhibit W, and that said franchise was so granted pursuant to the authority

conferred on said city by said Section 164, after due advertisement, the complainant having been the highest and best bidder therefor and its bid therefor having been accepted by said city, and that said franchise became effective on June 10, 1930, for a term of twenty years next ensuing, and by mesne assignments has come to vest in said Peoples; that at the same time the said city of Corbin pursuant to said franchise, and as a parcel thereof, in its proprietary capacity, entered into a contract with the complainant fixing the rates to be charged by said complainant and its assigns for gas distributed in said city pursuant to said franchise, effective during the term thereof, but aver that the rates so fixed and the period of time thereof were fixed subject to modification and regulation by a regulatory agency of the Commonwealth of Kentucky created and empowered [fol. 72] by subsequent legislation.

(3) To the complainant and its assigns, as shown by a copy thereof identified as complainant's Exhibit X, and that said franchise was so granted pursuant to the authority conferred on said city by said Section 164, after due advertisement, the complainant having been the highest and best bidder therefor and its bid therefor having been accepted by said city, and that said franchise became effective on January 20, 1931, for a term of twenty years next ensuing, and by mesne assignments has come to vest in said Peoples; that at the same time the said city of Corbin pursuant to said Section 164, in reference to said franchise, and as a parcel thereof, in its proprietary capacity, entered into a contract with the complainant fixing the rates to be charged by said complainant and its assigns for gas distributed in said city pursuant to said franchise, effective during the term thereof, but aver that the rates so fixed and the period of time thereof were fixed subject to modification and regulation by a regulatory agency of the Commonwealth of Kentucky created and empowered by subsequent legislation.

The defendants admit that said gas so sold and delivered to said Peoples by the complainant at the corporate limits of said city of Manchester pursuant to said contract is distributed by said Peoples in said city pursuant to a franchise granted by said city to the complainant and its assigns, as shown by a copy thereof identified as complainant's Exhibit Y; admit that said franchise was so granted pursuant

to the authority conferred on said city by said Section 164, after due advertisement, the complainant having been the highest and best bidder therefor and its bid therefor having [fol. 73] been accepted by said city; admit that said franchise became effective on February 24, 1931, for a term of twenty years next ensuing, and by mesne assignments has come to vest in said Peoples; admit that at the same time the said city of Manchester pursuant to said Section 164, in reference to said franchise; and as a parcel thereof, in its proprietary capacity, entered into a contract with the complainant fixing the rates to be charged by it and its assigns for gas distributed in said city pursuant to said franchise, effective during the term thereof, but aver that the rate so fixed and the period of time thereof were fixed subject to modification and regulation by a regulatory agency of the Commonwealth of Kentucky created and empowered by subsequent legislation.

Defendants further admit that the gas so sold and delivered to said Peoples by the complainant at the corporate limits of said city of Somerset pursuant to said contract is distributed by said Peoples in said city pursuant to a franchise granted by said city to W. H. Young and his assigns, as shown by a copy thereof identified as complainant's Exhibit Z; admit that said franchise was so granted pursuant to the said authority conferred by said Section 164, after due advertisement, the said grantee having been the highest and best bidder therefor and his bid therefor having been accepted by said city; admit that said franchise became effective on the 8th day of August, 1932, for a term of twenty years next ensuing, and by mesne assignments has come to vest in said Peoples; admit that at the same time the said city of Somerset pursuant to said Section 164, in reference to said franchise, and as a parcel thereof, in its proprietary capacity, entered into a contract with the said grantee fixing the rates to be charged by said grantee and his assigns for gas distributed in said city pursuant to said franchise, effective during the term thereof, but aver that the rates so fixed and the period of time thereof [fol. 74] were fixed subject to modification and regulation by a regulatory agency of the Commonwealth of Kentucky created and empowered by subsequent legislation.

Defendants admit that the gas so sold and delivered to said Edwards & Eversole Gas Company by the complainant at the corporate limits of said city of London pursuant to

said contract is distributed by said Edwards & Eversole Gas Company in said city pursuant to a franchise granted by said city to C. R. Luker and his assigns, as shown by a copy thereof identified as complainant's Exhibit AA; admit that said franchise was so granted pursuant to the authority conferred on said city by said Section 164, after due advertisement, the said grantee having been the highest and best bidder therefor and his bid therefor having been accepted by said city; admit that said franchise became effective on September 8, 1929, for a term of twenty years next ensuing, and by mesne assignments has come to vest in said Edwards & Eversole Gas Company; admit that at the same time the said city of London pursuant to said Section 164, in reference to said franchise, and as a parcel thereof, in its proprietary capacity, entered into a contract with the grantee fixing the rates to be charged by said grantee and his assigns for gas distributed in said city pursuant to said franchise, effective during the term thereof, but aver that the rates so fixed and the period of time thereof were fixed subject to modification and regulation by a regulatory agency of the Commonwealth of Kentucky created and empowered by subsequent legislation.

Defendants further admit that the said gas so sold and delivered to said Peoples by the complainant at the corporate limits of said town of Burning Springs is distributed by said Peoples in said town without any formal franchise therefor.

The defendants admit that said Peoples has outstanding [fol. 75] 1,280 shares of its common capital stock of the par value of \$25.00 each, of which the complainant is the owner of 1,000 shares; admit that the remaining 280 shares of said outstanding stock are owned as follows:

Stockholder	Address	Shares
John T. Bishop, Jr.	Basin, Wyoming	20
Marion C. Bishop	"	20
Helen Goodwin	Care Mrs. E. A. Durham, Sistersville, W. Va.	15
Mary V. Fisk	"	15
Elizabeth Brand	"	15
Ada B. Durham	"	50
Marjorie D. McLain	Garden City, N. Y.	20
E. Arthur Durham, Tr.	Sistersville, W. Va.	25
Edwin A. Durham, Inc.	"	100

Defendants state that they do not have any knowledge, information or belief as to whether or not said Peoples is indebted to the complainant in the sum of \$200,000.00 or in any sum.

Defendants state that they do not have any knowledge, information or belief as to whether or not any affiliation, domination or control whatsoever, direct or indirect, intermediate or remote, exists or has ever existed between the complainant and (1) said Central or (2) said D. L. Johnson, or any of his assigns, or (3) said Edwards & Eversole Gas Company or either of said members thereof; they state that they do not have any knowledge, information or belief as to whether or not each of the said contracts between the complainant and (1) said Central, (2) said D. L. Johnson, and (3) said Edwards & Eversole Gas Company, was negotiated and entered into between strangers at arm's length.

The defendants admit that the General Assembly of the [fol. 76] Commonwealth of Kentucky passed an act (1934, c. 145; as amended 1936, c. 92—Ky. Stat. 3952-1 to 3952-61, inclusive) originally effective on the 14th day of June, 1934, establishing the said Commission, and giving it regulatory authority in the public interest over certain "utilities" therein defined, inter alia, as follows:

"* * * corporations * * * that now or may hereafter own, control, operate or manage * * * (two) any facility used or to be used for or in connection with the production, manufacture, storage, distribution, sale or furnishing to or for the public for compensation natural or manufactured gas, or a mixture of the same, for light, heat, power or other uses; (three) any facility used or to be used for or in connection with the transporting or conveying of gas, crude oil or other fluid substance by pipe line to or for the public for compensation; * * *"

Defendants further admit that said act further provides (Ky. Stat. 3952-27):

"The commission shall have power, under the provisions of this act, to enforce, originate, establish, change and promulgate any rate, rates, joint rates, charges, tolls, schedules or service standards of any utility, subject to the provisions of this act, that are now fixed or that may in the future be fixed, by any contract, franchise or otherwise,

between any municipality and any such utility, and all rights, privileges and obligations arising out of any such contracts and agreements regulating any such rates, charges, schedules or service standards shall be subject to the jurisdiction and supervision of the commission; provided, however, that no such rate, charge, schedule or service standard shall be changed; nor any contract or agreement effecting same shall be abrogated or changed until and after a hearing has been had before the commission in the manner prescribed in this act.

“Nothing in this section or elsewhere in this act contained is intended or shall be construed to limit or restrict the police jurisdiction, contract rights, or powers of municipalities or political subdivisions, except as to the regulation of rates and service, exclusive jurisdiction over which is lodged in the Public Service Commission.”

Defendants deny that said provision of said act last above [fol. 77] quoted insofar as it seeks to limit the power of a municipality to contract, in its proprietary capacity, with a utility, in reference to a franchise granted to such utility, with respect to rates, is contrary to Sections 163 and 164 of the Constitution of Kentucky, vesting in cities and towns exclusive authority to grant franchises for the use of their streets, alleys and other public grounds for the distribution of gas and other commodities, and to contract in a proprietary capacity with the grantee, in reference to any such franchise, with respect to rates, but aver that said provision of said act is constitutional and entirely valid.

Defendants further deny that said provision of said contract last above quoted insofar as it undertakes to vest in said Commission regulatory jurisdiction of the rates to be charged by said Central in said city of Lexington, said City of Richmond, said City of Irvine, and said city of Ravenna, and by said Peoples in said city of Barbourville, said city of Corbin, said city of Manchester, said city of Somerset, and by said Edwards & Eversole Gas Company in said city of London, impairs the obligation of the several rate contracts entered into respectively between said cities and said distributors, in reference to their respective franchises, as shown by complainant's exhibits, in contravention of the contract clause (Article 1, Section 10, Clause 1) of the Constitution of the United States, and the contract clause (Section 19) of the Constitution of Kentucky, but aver that said provision of said contract is consistent

and in conformity with said contract clause of the Constitution of the United States and of the said contract clause of the Constitution of Kentucky.

Defendants admit that, on the — day of —, 1937, the said Commission served on the complainant by registered mail a copy of an order whereof the following is a true copy:

[fol. 78] "BEFORE THE PUBLIC SERVICE COMMISSION OF
KENTUCKY

"A meeting of the Public-Service Commission was this day held; present: Commissioners Cammack and McGregor.

Case No. 396

In the Matter of Investigation on Motion of the Commission of the Rates, Rules and Practices of the Petroleum Exploration, Inc.

"Notice of Investigation and Order to Show Cause

"Whereas, An examination of the reports of several wholesale and retail gas utilities serving in this state, show that they purchase gas at wholesale rates from the Petroleum Exploration, Inc., Lexington, Kentucky; and

"Whereas, The Commission has found under Sections 3952-1-12-13, and 14 that the Petroleum Exploration, Inc., is an operating utility in the State of Kentucky, and subject to the jurisdiction of this Commission; and

"Whereas, It is apparent from a comparison of these rates with those of other companies rendering a similar class of service in Kentucky that these rates may be excessive; and

"Whereas, These wholesale rates bear a definite relationship to the cost of gas to consumers in the following towns and communities, namely, Corbin, Somerset, Barbourville, Manchester, Burning Springs, Richmond, Irvine-Ravenna, London, Winchester, Mt. Sterling, Cynthiana, Georgetown, Lexington, Paris, Frankfort, Versailles, Midway, and North Middletown; and

"Whereas, Authority to initiate this investigation is vested in the Commission by Sections 3952-12-13, and 14 of the Kentucky Statutes,

"Now, Therefore, Notice is Hereby Given, That the Commission has entered upon an investigation of the above matters and that a public hearing will be held relative to said matters at the office of the Commission on June 29, 1937, at which time and place any person interested may appear and present such evidence as may be proper in the premises; and

"Whereas, Under such circumstances the Commission find the burden of proof upon the utility to show that rates and charges are fair and reasonable, and not arbitrary.

"Now, Therefore, it is Ordered:

[fol. 79] "1. That official representatives of the Petroleum Exploration, Inc., appear at such hearing and present evidence, if any it can, as will show conclusively the fairness and reasonableness of its present rates and charges for gas which it is selling to companies that are in turn selling the same gas at wholesale or retail in this state, or submit for the approval of the Commission such changes and revisions as will make such rates or charges fair and reasonable.

"2. That the Petroleum Exploration, Inc., submit at such hearing, a complete statement of all contracts, agreements, and working arrangements between said company and any corporation, partnership, trust, association, or person which controls, directly or indirectly, said company, or which is under domination and control of the interests which control Petroleum Exploration, Inc.

"3. That the Petroleum Exploration, Inc., file with the Commission on or before June 29, 1937, a complete and accurate statement of charges appearing on the books of said company for the years 1934, 1935 and 1936, representing payments made or obligations incurred by said company to any such corporation, partnership, trust association, or person as defined under (2) above, together with the name and address of the party with whom said charge first originated and the actual cost to such party for rendering the service for which said charge was made, and a detailed explanation of the nature of the service performed and by whom performed. Said statement shall include a detailed classification of such charges showing separately each class of service and the charges therefor and amounts cleared to each account.

"4. That all books, accounts, records, correspondence and memoranda of the Petroleum Exploration, Inc., be made available for examination by the Commission's representatives.

Notice is Hereby Given to the Petroleum Exploration, Inc., of the above order of the Commission.

Dated at Frankfort, Kentucky, this 29th day of May, 1937.

(S.) Chas. J. White, Secretary. (Seal.)"

Defendants state that they do not have any knowledge, information or belief as to whether or not there is now or ever has existed any contract, agreement or working arrangement as mentioned in paragraph "2" of the above quoted order, and that they do not have any knowledge, information or belief as to any charge, payment or obligation as mentioned in paragraph "3" thereof.

Defendants admit that on the 29th day of June, 1937, complainant by its agents and attorneys appeared before the said Commission and tendered a plea to its jurisdiction, as shown by a copy thereof identified as complainant's Exhibit BB, and that nothing in the way of traverse or avoidance was filed or testified to in opposition to said plea, and that an order entered on or as of June 29, 1937, said plea was overruled and that thereafter a copy of said order last mentioned was served by said Commission on the complainant by registered mail on July 3, 1937, whereof the following is a true copy:

"BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY

"A meeting of the Public Service Commission was held on this date; present: Chairman Beckham, Commissioners Cammack and McGregor.

• • • • •

Case No. 396

In the Matter of Investigation on Motion of the Commission of the Rates, Rules and Practices of the Petroleum Exploration, Inc.

"Order

"This cause coming on to be heard on the plea of the Petroleum Exploration, Inc., to the jurisdiction of the Com-

mission and it appearing to the Commission that the Petroleum Exploration, Inc., is engaged in the business of producing, selling and delivering natural gas to various utility companies, which sell and distribute the same to the public in Corbin, Somerset, Barbourville, Manchester, Burning Springs, Richmond, Irvine, Ravenna, London, Winchester, Mt. Sterling, Cynthiana, Georgetown, Lexington, Paris, Frankfort, Versailles, Midway, and North Middletown, all of which towns and all communities are in Kentucky; and it further appearing that the Petroleum Exploration, Inc., owns, controls, operates, and manages facilities used in connection with the production, storage, distribution, sale, and furnishing to and for the public for compensation natural gas for light, heat, power, and other purposes and owns and controls facilities used in connection with the transporting and conveying of gas by pipe line to and for the public for compensation; and it further appearing that the Petroleum Exploration, Inc., is a 'utility' under sections 3952-1-12-13-14 of the Kentucky Statutes; and the Commission being advised,

[fol. 81] "It is Ordered, That the plea to the jurisdiction of the Public Service Commission by the Petroleum Exploration, Inc., be and hereby it is overruled and that the demurrer to the jurisdiction of the Public Service Commission by the Petroleum Exploration, Inc., be and hereby it is overruled and that this action be and hereby it is set down for formal hearing on Thursday, July 29, 1937, at 10:00 A. M., on the notice of investigation and order to show cause issued by the Commission herein on May 29, 1937, to all of which the Petroleum Exploration, Inc., objects and excepts.

"This the 29th day of June, 1937.

"Public Service Commission of Kentucky, (S.) J. C. W. Beckham, Chairman. (S.) James W. Cammack, Jr., Commissioner. (S.) Thos. B. McGregor, Commissioner. (Seal.)

Attest: (S.) Chas. J. White, Secretary."

Defendants admit that thereafter on July 20, 1937, pursuant to the provisions of said act (Ky. Stat. 3952-36) the complainant again appeared before said Commission, by its attorney, and filed its application for a rehearing, together with an amended and supplemental plea to the juris-

diction of said Commission, as shown by copies thereof identified as complainant's Exhibits CC and DD.

Defendants admit that the said Commission has not yet ruled upon said application and amended and supplemental plea, and further admit that the Commission intended and threatened to proceed with said investigation, case number 396, on July 29, 1937, and thereafter, and would have so proceeded except for a temporary restraining order issued herein by the judge of this court, but denies that said proceeding would have been unlawful, unreasonable and useless, but aver that said proceeding would have been lawful, reasonable, useful and needful.

[fol. 82] Defendants deny that it is the obvious purpose of the said Commission to attempt to lower some or all of the prices at which the complainant pursuant to the aforesaid contracts sells and delivers gas to said Central, said Peoples and said Edwards & Eversole Gas Company, respectively, but aver that the purpose of the said Commission in instituting and conducting said investigation and proceeding was to determine a fair and reasonable price or rate to be charged by the complainant pursuant to the aforesaid contracts, and to fix said price or rate.

The defendants deny that the said Commission is without power to reduce the said prices for said gas so sold and delivered to said Central for distribution in the said cities of Lexington, Richmond, Irvine and Ravenna, and to the said Edwards & Eversole Gas Company for distribution in said city of London, and to said Peoples for distribution in said cities of Barbourville, Corbin, Manchester and Somerset, but aver that the said Commission does have power to reduce the said prices for said gas if said prices are excessive and unfair and unreasonable to said Central, said Edwards & Eversole Gas Company and said Peoples, and to the consuming public served by said Central, said Edwards & Eversole Gas Company, and said Peoples; deny that the distribution rates which are fixed by said contracts are not subject to the regulatory jurisdiction of the said Commission, but aver that said rates are subject to the regulatory jurisdiction of said Commission; deny that any reduction of any of the said prices so charged by the complainant to the said respective distributors for said gas so sold and delivered would not be in the public interest, or for the public benefit, but solely for the private interest and benefit of said respective distributors or some of them,

thereby (1) depriving the complainant of its property without due process of law and denying to it the equal protection [fol. 83] of the laws contrary to the Fourteenth Amendment (Section 1) of the Constitution of the United States, and (2) impairing the obligation of its several contracts, above mentioned, for the sale and delivery of said gas to said respective distributors contrary to the said contract clauses of the Constitution of the United States and Kentucky, but aver that any reduction of any of the said prices so charged by the complainant to the respective distributors for said gas so sold and delivered would be in the public interest and would accrue to the consuming public through other and subsequent regulatory action by the said Commission, and further aver that any reduction of any of the said prices so charged by the complainant to the respective distributors for said gas so sold and delivered, if it should be determined that a reduced price would be fair and reasonable to the complainant, would be consistent and in conformity with the said clauses of the Constitution of the United States and Kentucky.

The defendants further deny that independently of said respective contracts for gas in said cities of Lexington, Richmond, Irvine and Ravenna, of said Central, and in said city of London, of said Edwards & Eversole Gas Company, the respective contracts between the complainant and each of said distributors for the sale and delivery of gas for such distribution are not subject to the regulatory jurisdiction of said Commission, and deny that any reduction of any of the prices fixed by said last mentioned contracts would deprive the complainant of its property without due process of law or would deny the complainant the equal protection of the laws or would impair the obligation of the complainant's contracts contrary to the constitutional limitations aforesaid, but aver that said contracts fixing distribution rates for gas as aforesaid are subject to the [fol. 84] regulatory jurisdiction of said Commission, and further aver that any reduction of any of the prices fixed by said contracts, if it should be determined by the Commission that a reduction thereof would be fair and reasonable to the complainant, would not deprive the complainant of its property without due process of law or deny it the equal protection of the laws, or impair the obligation of its said contracts.

Defendants further deny that independently of said respective contracts fixing the distribution rates for gas in said cities of Barbourville, Corbin, Manchester and Somerset, of said Peoples, the said respective contracts between the complainant and said distributors for the sale and delivery of gas for such distribution are not subject to the direct regulatory jurisdiction of said Commission, but aver that said contracts and the prices for said gas as fixed therein are subject to the direct regulatory jurisdiction of said Commission.

Defendants admit that the complainant delivers gas at the corporate limits of said cities of Corbin, Somerset, Barbourville, Manchester, Richmond, Irvine and Lexington, and of the said town of Burning Springs, at wholesale for distribution therein by the respective local utilities above named, but deny that the complainant does not deliver gas at or for distribution in said towns and communities of Winchester, Mt. Sterling, Cynthiana, Georgetown, Paris, Frankfort, Midway and North Middletown, as set forth in said Commission's orders herein before quoted, and aver that the complainant does deliver gas for distribution in said towns and communities.

The defendants state that they do not have any knowledge, information or belief that complainant's remaining investment in its said natural gas production and transmission properties amounts to \$1,500,000.00, in round numbers, [fol. 85] or that the actual value of said property exceeds said sum.

Defendants deny that the cost and expense to the complainant to "show conclusively the fairness and reasonableness of its present rates and charges for gas" as required by said order of May 29, 1937, hereinbefore quoted, giving "due consideration to (its) * * * history and development * * * and its property, original cost, cost of reproductions as a going concern, and other elements of value recognized by the law of the land for rate making purposes" as required by said act (Ky. Stat. 3952-19), would be the sum of \$25,000.00, in round numbers.

The defendants deny that the said investigation, case number 296, and the said orders entered therein, that is, of the 29th day of May and June, respectively, 1937, above quoted, are unlawful, unreasonable and arbitrary, but aver that they are lawful and reasonable; deny that if said in-

investigation and orders are further prosecuted, the complainant will be put to unlawful and needless expense in a great sum, to-wit, the said sum of \$25,000.00 for the recovery of which the complainant will have no adequate remedy, and its loss thereby occasioned will be irreparable; deny that the pretended findings in said orders are arbitrary, but aver that said alleged findings are not findings, but are merely statements made by the Commission based on general information of the members of said Commission.

IV

Answering the fourth paragraph of the bill, the defendants admit that the said Central Kentucky Natural Gas Company, is a corporation, organized and existing solely under the laws of the state of Kentucky, with an office at said city of Lexington, in the eastern district of Kentucky; admit that said Peoples Gas Company of Kentucky is a corporation organized and existing solely under the laws of [fol. 86] Delaware, duly authorized and qualified to hold property and do business as a foreign corporation in the state of Kentucky, with an office in said city of Lexington, in the eastern district of Kentucky; admit that each of said P. P. Edwards and R. C. Eversole, composing said partnership of Edwards and Eversole Gas Company, is a citizen of the state of Kentucky and a resident of the eastern district of Kentucky.

V

The defendants for further answer to complainant's bill state and allege that the complainant is the parent corporation of the Peoples Gas Company of Kentucky, referred to in complainant's bill and hereinbefore and hereinafter referred to as "peoples", and that said Peoples is a subsidiary of the complainant, and is controlled by the complainant, and the defendants further allege that the contracts mentioned in complainant's bill as having been entered into and existing between the complainant and said Peoples were made and entered into by the complainant and said Peoples at a time when the complainant was the parent corporation of said Peoples and said Peoples was a subsidiary of the complainant and under the control of the complainant, and that said contracts were not made and entered into at arm's length by said parties thereto.

VI

Wherefore, the defendants, having answered the bill of the complainant, pray that the complainant's bill be dismissed, and further pray for any and all other proper relief.

Hubert Meredith, Attorney General; J. W. Jones, Assistant Attorney General, Attorneys for Defendants.

[fol. 87] *Duly sworn to by James W. Cammack, Jr. - Jurat omitted in printing.*

IN UNITED STATES DISTRICT COURT

MOTION FOR TEMPORARY INJUNCTION—Filed August 7, 1937

Comes the plaintiff, Petroleum Exploration, and moves the Court for a temporary injunction, and on final hearing for a permanent injunction, in accordance with the prayer of its bill of complaint herein.

W. J. Brennan, Allen Prewitt, For Plaintiff.

IN UNITED STATES DISTRICT COURT

ORDER OF SUBMISSION—Filed and Entered August 7, 1937

This cause coming on for hearing before the Honorable Xen Hicks, Judge of the Circuit Court of Appeals of the Sixth Circuit, Honorable Elwood Hamilton, Judge of the Western District, and Honorable H. Church Ford, Judge of the Eastern District of Kentucky, sitting as a court assembled under 266 of the Federal Code, thereupon came the [fol. 88] plaintiff, Petroleum Exploration, and filed its motion for an interlocutory injunction, and on final hearing a permanent injunction in accordance with the prayer of its bill of complaint; also filed waiver of notice of this hearing by the Honorable Albert B. Chandler, as Governor of Kentucky. Thereupon, all parties having announced ready, the Court heard the testimony of the witnesses offered by the plaintiff to maintain the issue on its part, and cross examination thereof by the defendants, all reported by the Official Court Reporter as prescribed by law and the Rules of this Court. The defendants offered no testimony

in chief on their part. Whereupon, by agreement of the parties, the above styled cause is finally submitted upon the entire record made herein and upon the merits for the final decision of the Court.

It is ordered that plaintiff shall have twenty (20) days from this date within which to file its brief, defendants ten (10) days thereafter in which to file their answering brief, and the plaintiff five (5) days thereafter in which to reply, all briefs to be filed in triplicate and copies thereof furnished opposing counsel at the time of filing.

By agreement of the parties, the temporary restraining order heretofore made in this cause is continued in effect until further order and final decision of this cause upon its merits.

It is further ordered that the said Official Reporter do file with the Clerk, as soon as may be, in triplicate a transcript of the testimony adduced at the said hearing, which shall thereupon become and is made a part of the record in this suit.

H. Church Ford, Judge.

This order should be entered:

[fol. 89] Allen Prewitt, W. J. Brennan, Attorneys for Plaintiff. Hubert Meredith, Atty. Gen.; J. W. Jones, Asst. Atty. Gen., Attorneys for Defendants.

August 7, 1937.

IN UNITED STATES DISTRICT COURT

Condensed Statement of Evidence—Filed January 6, 1938

Introduced before Honorable Zen Hicks, Judge of the Circuit Court of Appeals of the United States for the Sixth Circuit, presiding, and Honorable H. Church Ford, Judge of the United States District Court for the Eastern District of Kentucky, and Honorable Elwood Hamilton, Judge of the United States District Court for the Western District of Kentucky, at Lexington, Kentucky.

Be it remembered that upon the hearing in this cause upon the motion of the plaintiff, Petroleum Exploration, for a preliminary injunction at the place and on the day and date above mentioned before said Judges assembled as a court under Section 266 of the Judicial Code of the United

States, trial thereof was had and upon said trial the following evidences were taken and had on said motion, by agreement of the parties to be also read on the merits, to-wit:

Plaintiff to maintain the issue on its part introduced the following witnesses, who testified as follows:

LLOYD E. GREGG

I have been Secretary of Petroleum Exploration since 1929 and prior to that time had been its Assistant Secretary from about 1920. I am the custodian of its stock books, which I have here with me. (Here the stock books were [fol. 90] offered for the inspection of the Court and Counsel for the defense.) They show that the Central-Kentucky Natural Gas Company has never been a stockholder in the Petroleum Exploration; that the East Kentucky Gas Company has never been a stockholder in the Petroleum Exploration; that D. L. Johnson has never been a stockholder in the Petroleum Exploration; that Edwards and Eversole have never been stockholders in the Petroleum Exploration.

The Petroleum Exploration entered into a contract with the Central Kentucky Natural Gas Company to furnish it certain given quantities of gas at wholesale at the corporate limits of Lexington. It also entered into a contract with one D. L. Johnson to furnish him certain gas at the corporate limits of Richmond and also at Irvine, for distribution, in the first instance, at Richmond, and in the second instance, in Irvine and Ravenna adjacent thereto. Mr. Johnson assigned his contract to the East Kentucky Gas Company, which in turn assigned its contract to the Central Kentucky Natural Gas Company; so that now the Central Kentucky Natural Gas Company is the distributor in Richmond, Irvine and Ravenna.

None of the stockholders of the East Kentucky Gas Company or the Central Kentucky Natural Gas Company or Mr. Johnson, has ever been a stockholder in Petroleum Exploration.

I have here quarterly lists of our stockholders from September 15, 1926, to and including June 15, 1937, which I likewise offer for inspection.

D. L. Johnson entered into the contract with plaintiff set out in full in the bill of complaint in this case for the sale of gas and delivery at the corporate limits of Richmond, Kentucky, and at the corporate limits of Irvine, Kentucky. He

assigned that contract to the East Kentucky Gas Company, which in turn assigned it to the Central Kentucky Natural Gas Company.

[fol. 91] No connection or affiliation or control, immediate or remote, has ever existed between plaintiff and the East Kentucky Gas Company. Likewise, no affiliation, either direct or indirect, has ever existed between plaintiff and the Central Kentucky Natural Gas Company. The policies of plaintiff have never been controlled, either directly or remotely, by the Central Kentucky Natural Gas Company. Plaintiff has never in any manner, either immediately or remotely, controlled the policies of the Central Kentucky Natural Gas Company.

I am familiar with the contract set out in the bill of complaint between plaintiff and Edwards & Eversole, a co-partnership, for delivery of gas to the latter at the corporate limits of the town of London, Kentucky. Plaintiff is not in anywise interested in that partnership. Neither that partnership nor any of its members has ever been a stockholder in the plaintiff company. The co-partnership of Edwards & Eversole has never exercised any control, immediate or remote, of the policies of the plaintiff, Petroleum Exploration.

Plaintiff has never owned any stock in or exercised any control of either the Central Kentucky Natural Gas Company or the East Kentucky Gas Company.

I now submit a list of the directors and officers of Petroleum Exploration from 1926 to this date.

Cross-examination:

There has never been any duplication of officers between the Petroleum Exploration and the Central Kentucky Natural Gas Company or the East Kentucky Gas Company. The contract between Petroleum Exploration and the Central Kentucky Natural Gas Company filed as an exhibit with the plaintiff's bill of complaint is the entire contract between those parties.

[fol. 92] Redirect examination:

The contract between Petroleum Exploration and the Central Kentucky Natural Gas Company for the delivery of gas at the corporate limits of Lexington, Kentucky, was entered into at arm's length. Likewise, the contract between Petroleum Exploration and D. L. Johnson for the delivery

of gas at the corporate limits of Richmond and also at the corporate limits of Irvine, successively assigned to the East Kentucky Gas Company and to the Central Kentucky Natural Gas Company, was entered into at arm's length. Likewise was the contract between Petroleum Exploration and Edwards and Eversole for delivery of gas at London.

Recross-examination:

Plaintiff has owned and controlled a majority of the stock of the Peoples Gas Company of Kentucky since the organization of the latter company in 1930. The latter company distributes gas at Barbourville, Corbin, Somerset and Manchester, where it holds public franchises.

JOHN WISEMAN

I am a Certified Public Accountant and Tax Consultant in the States of Ohio and West Virginia, maintaining my offices at Wheeling. I am Tax and Accounting Consultant for Petroleum Exploration and am familiar with its books, papers and accounts. I am familiar with the system of accounting prescribed for the gas companies of Kentucky by the Public Service Commission of Kentucky. I am familiar with the system of accounting under the Federal Statutes for income tax purposes.

Plaintiff's books have been kept under a system permissible under the Federal Income Tax Statutes and not in accordance with the system prescribed for gas utilities by the Kentucky Public Service Commission. There is a difference between the two systems. If the Commission would agree to certain adjustments apparently necessary, it would cost not exceeding \$1500.00 to conform the books of the company to the system prescribed by the Kentucky Public Service Commission.

Defendants' objection to this last statement overruled and defendants except.

If the Commission did not agree to these adjustments, it would cost plaintiff a great deal in excess of \$5000.00 to set its books up with respect to its gas business according to the requirements of the Kentucky Public Service Commission, from original sources of the company's account-

ing information. The fundamental difference between the two systems is in the treatment of capital items and expense items. In the system prescribed by the Kentucky Public Service Commission there are many items that are treated as capital and should be treated as capital, that are deducted under the Federal Income Tax laws. You have an option under the Federal Income Tax laws to deduct certain items such as drilling items, development of gas properties, etc., during the development period. Under the Federal Income Tax system you have an option of deducting the cost of drilling a well from the gross income. You must capitalize it under the Kentucky Public Service Commission's system. It would not be necessary to go back into the vouchers, if taken from the general books of record; but if it would be necessary to prove each voucher, that would necessitate a considerable amount of detail and going back into the payrolls.

There are other differences. Certain costs of taxes and expenses during the development of the gas field are permissible deductions under the Federal Income Tax laws, [fol. 94] whereas during the development of a gas field under the system prescribed by the Kentucky Public Service Commission and during the construction of gas lines, it would be necessary to capitalize those items. Further, under the system prescribed by the Kentucky Public Service Commission it is permissible to capitalize interest charges on money put into the gas field and the pipe lines during the so-called development or construction period, whereas under the Federal Income Tax laws all interest is deductible.

From my survey of the books and records of accounting of Petroleum Exploration, it has a net remaining investment of approximately \$1,550,000, as of January 1, 1937, after deducting amortization, including what are sometimes called depletion and depreciation, according to proper accounting methods.

Cross-examination:

So far as I know, Petroleum Exploration has not been in the process of developing new territory for gas since 1932. The items about which I have testified relate to the development of its particular gas properties in the State of Kentucky. To conform our accounting system to that required

by the Public Service Commission, it would be necessary to go back and restore items that were charged off under the Income Tax procedure that were allowed as tax deductions under the Federal Income Tax laws. The property ledgers, general ledger and list records do not now show development expenses by items. They show them by total of cost of wells and equipment. If the Commission would be willing to accept those totals, then it would cost approximately \$1500.00 to make the necessary changes to conform the books to the Commission's prescribed system of accounting.

[fol. 95]

JAMES A. YUNKER

I am a Gas Engineer residing at Louisville, Kentucky. I have been engaged in the production and appraisalment of natural gas properties for the last twenty years. I have had experience in the cost of appraising property used in gas production through making appraisals of small companies and also working with the companies with which I was affiliated in connection with appraisals being made of their properties by other appraisalment firms.

I am familiar, at least in a general way, with the gas fields and transmission lines of Petroleum Exploration in the State of Kentucky. From the time they began to develop gas in Kentucky, it was a matter of interest to the companies that I was associated with to keep track of their development as a means of ascertaining future supplies of gas available in Kentucky; and beginning with their first development we followed it very closely, until the last few years, during which time we have kept a certain contact with it, so that I believe I can say that I am generally familiar with their property.

To employ a firm of reputable and competent appraisal engineers to value its properties used in the production and transmission of gas to show conclusively the fairness and reasonableness of its present rates and charges for gas, giving due consideration to its history and development and to its property original cost, and cost of reproduction as a going concern, and other elements of value recognized by the law of the land for rate-making purposes, and to accumulate all the engineering information necessary for these purposes, I should estimate it would cost plaintiff not

less than fifteen thousand (\$15,000.00) dollars. This would be the minimum fee of a reputable and competent engineer-[fol. 96] ing firm in my opinion. In addition to that, the company would be put to a considerable expense, because whenever the engineers for the appraisal firms were working, there would have to be engineers of the Company working right alongside of them, for instance, to show them locations, to check with them on conditions of pipe, to give them details to show them where the records were, to talk with them about specific and special constructions, the character of the soil; and generally the cost to the company for its engineering service will run an appreciable percentage of the cost of the appraisal by the outside engineers. Petroleum Exploration would be required to give the appraisal engineers assistance in making their appraisal, which in my opinion would cost it \$5000.00 in addition. The records of the company do not contain this information.

The principal difference is to present an appraisal of a property in a Commission case which would stand up before a Court; it has to be a complete and absolutely detailed inventory of everything that the Company has and everything that it had to do in the way of construction which does not actually show, intangible construction that had to be added in, and also all of the costs relative to the interest on development during construction, and a thousand and one items that make the thing an entirely different job.

You would be obliged to commence as though there were no books kept at all. The engineers would have to see and examine and gather detail price data, figure construction costs and all sorts of intangible costs and also the going concern value; they would have to figure obsolescence, the per cent. condition of the property, the probable life, and how much gas could probably be sold in the future, and where the probable sales would be, and a thousand and one things that would not enter into it for tax purposes of the [fol. 97] bookkeeping of a company such as Petroleum Exploration.

Cross-examination:

I am not and have never been in the service of Petroleum Exploration. I know a number of its personnel. I have on two or three occasions worked with the Petroleum Exploration on income tax appraisals of very small operations of

their properties with a view of determining the value of leases and cost of them; and because at one time a company with which I was associated sent me to Sistersville to make a survey of their property with the expectation of a purchase, I am familiar to the extent of knowing that their records are not voluminous enough to permit any firm of appraisal engineers to make an inventory without starting from the ground up. The purpose of my examination of their records was not to determine that particular point. They have shown me the appraisal records that they have, and they are not such records as I would desire to present in a rate-making case.

I am an Engineer and have done appraisals and worked with companies with which I was associated in making appraisals. I last made an appraisal of a small company in Indiana for the Ohio Oil Company about two years ago. I have made approximately a half dozen appraisals of gas properties in the last five years, all small ones however. I have made appraisals of gas properties in Kentucky. I made one working with some engineers for the United Fuel in 1929, of a big property in Eastern Kentucky, several million dollar property, and I have also made three or four small ones with the smaller companies that desired to have a price system.

[fol. 98] The defendants offered no testimony.

ORDER APPROVING CONDENSED STATEMENT OF EVIDENCE—
Entered January 6, 1938

The foregoing condensed statement of evidence is hereby approved and filed, by said Court as containing a full statement of all the evidence heard in this cause, and is made part of the record for use on appeal of this case to the Supreme Court of the United States this 6th day of January, 1938.

Teste:

H. Church Ford, United States District Judge.

The defendants approve said statement of evidence.

By Hubert Meredith, Attorney General of Kentucky;
J. W. Jones, Assistant Attorney General.

[fol. 99] IN UNITED STATES DISTRICT COURT

Before Hicks, Circuit Judge, and Hamilton and Ford, District Judges

OPINION—Filed November 6, 1937

FORD, District Judge:

This is an action in equity filed by Petroleum Exploration, a corporation doing business in Kentucky but organized and existing under the laws of the State of Maine, to enjoin the Public Service Commission of Kentucky from enforcing or attempting to enforce compliance with an order of the Commission, pursuant to which the Commission proposes to inaugurate an investigation of the rates charged by complainant for gas transported by its pipe lines from its gas fields in Eastern Kentucky to the corporate limits of various Kentucky municipalities and there sold and delivered to certain public utility corporations.

The order complained of required the complainant to produce, at a public hearing before the Commission, evidence showing conclusively the fairness and reasonableness of its rates and charges, a complete statement of all contracts and working arrangements with its subsidiary corporations, if any, and to make available for examination by the Commission's representatives, all its books, accounts, records, correspondence and memoranda.

At the time fixed for the hearing, the complainant appeared and offered a plea challenging the Commission's jurisdiction. The Commission overruled the plea and made an order fixing a later date for the proposed hearing and investigation. Before that time arrived, the complainant filed with the Commission an application for a rehearing on the jurisdictional question, together with an amended and supplemental plea which, on account of the institution of this action, has not been acted upon.

In addition to alleging diversity of citizenship and the [fol. 100] value of the matter in controversy, required to sustain federal jurisdiction under section 24 of the Judicial Code (28 U. S. C. A. § 1), the bill further alleges, in substance, that the complainant, in transporting and selling its gas under contract to certain public utility corporations, is engaged merely in an ordinary private commercial enterprise, that it is not a public utility and is not subject and

can not be made subject to the regulatory jurisdiction of the Commission by any law which would be valid under the State or Federal Constitution. It charges that the obvious purpose of the Commission is to attempt, without right or authority of law, to lower some or all of the rates fixed under its existing contracts, and that the order, made with that end in view, is repugnant to the contract clause of the Federal Constitution and is in violation of the due process and equal protection clauses of the Fourteenth Amendment.

The case is submitted upon complainant's motion for a temporary injunction to restrain enforcement of the order of the Commission. Permanent injunction is the ultimate relief sought.

Injunctive relief is an extraordinary remedy and "the mere fact that a law is unconstitutional does not entitle a party to relief by injunction against proceedings in compliance therewith, but it must appear that he has no adequate remedy by the ordinary processes of the law or that the case falls under some recognized head of equity jurisdiction." *Cruickshank v. Bidwell*, 176 U. S. 73, 80.

In *State Corporation Commission of Kansas, et al. v. Wichita Gas Company*, 290 U. S. 561, it was asserted that a certain order of the State Corporation Commission of Kansas, made as a preliminary step toward ascertaining and fixing reasonable rates to be charged by a public utility, was repugnant to the Federal Constitution, and temporary and permanent injunction was sought. The court, in denying injunctive relief, said:

[fol. 101] "We need not decide whether these provisions are repugnant to the Constitution or whether they are otherwise invalid. The invalidity of such an order is not of itself ground for injunction. Unless necessary to protect rights against injuries otherwise irremediable, injunction should not be granted."

It is further alleged in the bill, in substance, that the expense necessary to be incurred by the complainant in order to make the showing required by the Commission would be approximately \$25,000 and for the recovery of such expenditure, if made, the complainant would have no remedy and its great loss thereby suffered would be irreparable. It is to prevent such claimed irreparable injury that complainant asserts the right to equitable relief in this action.

The Act of the General Assembly of Kentucky, creating the "Public Service Commission of Kentucky", and fixing and defining its powers and functions (1934 Acts, ch. 145; Kentucky Statutes § 3952b—4) provides "The commission may compel obedience to its lawful orders by mandamus or injunctions or other proper proceedings in the Franklin Circuit Court of this Commonwealth, or any other court of competent jurisdiction", and further (sec. 9), after prescribing penalties to be imposed upon utilities for neglect or refusal to obey "any lawful requirement or order made by the commission", the Act provides: "Whenever any utility is subject to a penalty under this Act, the commission shall certify the facts to the Commission Counsel who shall institute and prosecute an action for recovery of such principal amount due and the penalty."

It thus appears that the Commission can do nothing more than institute mandamus proceedings against the complainant in a court of the state to compel observance of its order or certify facts to the Commission Counsel upon which he [fol. 102] may base an action in the state court to recover the prescribed penalties. In either event, sole authority for making the Commission's orders coercively effective rests with the court in which such action may be instituted.

It is not shown by the bill that any court proceeding is pending or threatened. Should the Commission, however, apply to the court for mandamus to enforce compliance with its order or should the Commission Counsel institute a proceeding to recover the prescribed penalties, all questions as to the power or jurisdiction of the Commission, the regularity of its proceeding and all questions of constitutional right or statutory authority would then be open for examination and determination by the state court. If the complainant's contention that its rights, guaranteed under the Federal Constitution, would be infringed by enforcement of the order against it, be properly set up in such action and denied by the highest court of the state, adequate provision is made for review of the action of the state court by the Supreme Court of the United States (Judicial Code § 237; 28 U. S. C. A. § 344). *Morgan v. Rogers*, 284 U. S. 521, 526.

In *Federal Trade Commission v. Claire Company*, 274 U. S. 160, certain corporations challenged the constitutional validity of orders of the Federal Trade Commission requiring them to furnish monthly reports of the cost of pro-

duction, balance sheets and other voluminous information relating to the business in which the complainant corporations were engaged, and sought by injunction to restrain the Commission from enforcing or attempting to enforce the challenged orders. The Court said:

"There was nothing which the Commission could have done to secure enforcement of the challenged orders except to request the Attorney General to institute proceedings for a mandamus or supply him with the necessary facts [fol. 103] for an action to enforce the incurred forfeitures. If, exercising his discretion, he had instituted either proceeding the defendant therein would have been fully heard and could have adequately and effectively presented every ground of objection sought to be presented now. Consequently, the trial court should have refused to entertain the bill in equity for an injunction.

* * * Until the Attorney General acts, the defendants can not suffer, and when he does act, they can promptly answer and have full opportunity to contest the legality of any prejudicial proceeding against them. That right being adequate, they were not in a position to ask relief by injunction."

Since the Commission is powerless to coerce observance of the challenged order by inflicting penalties for disobedience or otherwise, and it is not shown that complainant's business or property rights are in any way threatened by any arbitrary action of the Commission, obviously, notwithstanding the Commission's order, the complainant may passively stand upon its claimed constitutional rights and, when necessary, may assert them in defense of any enforcement proceedings instituted in the courts without, in the meantime, suffering any injury or damage or being compelled to incur any expense whatever. *Boise Artesian Water Co. v. Boise City* 213 U. S. 276.

Equity jurisdiction to grant injunctive relief should be exercised only where "in a case reasonably free from doubt" it is shown that "intervention is essential in order effectually to protect property rights against injuries otherwise irremediable." *Cavanaugh v. Looney, et al.*, 248 U. S. [fol. 104] 453, 456.

The defendant filed an answer to the bill on the merits without raising the question as to equity jurisdiction. It is pointed out, however, in *Federal Trade Commission v.*

Claire Company, *supra*, that acquiescence of the parties is not enough to justify the court in assuming jurisdiction, and the want of equity jurisdiction, if obvious, may and should be objected to by the court, *sua sponte*. *Twist v. Prairie Oil Company*, 274 U. S. 684, 690; *Singer Sewing Machine Co. v. Benedict*, 229 U. S. 481.

We are of the opinion that the bill of complaint fails to state a case within the recognized sphere of federal equity jurisdiction, and the motion for temporary injunction should be denied.

By stipulation the case having also been submitted for final determination, the application for a permanent injunction should be likewise denied, and the bill dismissed for want of equity.

IN UNITED STATES DISTRICT COURT

DISSENTING OPINION

Judge HAMILTON, dissenting in part:

I agree with the conclusion of the majority opinion because the Act of May 14, 1934, Chapter 283, Section 1, 48 Stat. 775, U. S. C. A. Title 28, Section 41(1), withdraws from the jurisdiction of the District Courts of the United States suits enjoining the execution of orders of administrative boards or commissions where the laws of the State provide a plain, speedy and efficient remedy for a judicial review.

The laws of the Commonwealth of Kentucky provide for an adequate judicial review of the orders and findings of its Public Service Commission. (Carroll's Kentucky Statutes, 1936 Edition, Sections 3952-1 to 3952-61. The plaintiff alleges in its petition that it does not come within the term "utility or utilities" as defined under Carroll's Kentucky Statutes, 1936 Edition, Section 3952-1, and for that reason this case does not fall within the bar of the Act of May 14, [fol. 105] 1934; but I am of the opinion that this Act, being remedial in its nature, should be liberally construed in order that the Courts of the States may be left free to interpret their own statutes. It may be said, however, that the Public Utilities Act of the Commonwealth of Kentucky includes within its terms all persons, corporations, their lessees, trustees or receivers, producing, manufacturing, storing, dis-

tributing or selling natural or artificial gas for public consumption. The Act of May 14, 1934, cannot be avoided so as to confer jurisdiction on this Court by a naked allegation of the plaintiff that it is not one of the persons coming within the statutory law of the Commonwealth of Kentucky regulating public utilities.

The Commission, in its order, which the plaintiff seeks to enjoin in this action, found that the plaintiff was a public utility and had authority to fix its rates. The language of the Act (48 Stat. 775) expressly prohibits District Courts from enjoining any order of a State rate-making body.

Lower Federal Courts are creatures of the Congress, and their powers are confined within the Acts bringing them into existence, and whatever may be their inherent power incident to jurisdiction, the Congress can take from them the authority to grant injunctions in rate making cases and confer such power on the Courts of the State, even though a Federal constitutional right is involved. *Ex Parte Robinson*, 19 Wall. 505; *Bessette v. Conkey Company*, 194 U. S. 324; *Michaelson v. United States*, 266 U. S. 42, 66; *Gillis, Receiver v. California*, 293 U. S. 62, 67.

If the majority opinion be correct, the Act of May 14, 1934, was wholly unnecessary, because in no event would the Federal Court enjoin the orders of a public utility rate making body if the State law provided an adequate judicial review.

The case of *State Corporation Commission of Kansas v. Wichita Gas Company*, 290 U. S. 561, 570, relied on in the [fol. 106] opinion of the majority, has no application to the case at bar. In the cited case, the Commission sought to compel certain pipe line companies to disclose to it facts to be used in fixing the rates of the distributing companies. The order of the Commission sought to be enjoined did not fix rates, nor was it contended as a basis for relief that the Commission was without authority to inquire into the charges of the Wichita Company. The Court said:

“The Commission’s proceedings are to be regarded as having been taken to secure information later to be used for the ascertainment of reasonableness of rates. The order is therefore legislative in character. The commission’s decisions upon the matters covered by it cannot be res adjudicata when challenged in a confiscation case or other suit involving their validity or the validity of any rate

depending upon them. *Prentiss v. Atlantic Coast Line*, 211 U. S. 210, 227. *Chicago, M. & St. P. Ry. Co. v. Minnesota*, 134 U. S. 418, 452, et seq. But the decisions of state courts reviewing commission orders making rates are *res adjudicata* and can be so pleaded in suits subsequently brought in federal courts to enjoin their enforcement. *Detroit & Mackinac Ry. v. Mich. R. R. Comm'n.*, 235 U. S. 402, 405. *Napa Valley Co. v. R. R. Comm'n.*, 251 U. S. 366, 373. The appellees were not obliged preliminarily to institute any action or proceeding in the Kansas Court in order to obtain in a federal court relief from an order of the commission on the ground that it is repugnant to the Federal Constitution. *Bacon v. Rutland R. Co.*, 232 U. S. 134, 138. *Missouri v. Chicago, B. & Q. R. Co.*, 241 U. S. 533, 542. *Ex parte Young*, 209 U. S. 123, 166. And upon the issue of confiscation *vel non* they are entitled to the independent judgment of the courts as to both law and facts. *Ohio Valley Co. v. Ben Avon Borough*, 253 U. S. 287, 289. *Bluefield Co. v. Pub. Serv. Comm'n.*, 262 U. S. 679, 689. *United Railways v. West*, 280 U. S. 234, 251."

The plaintiff's suit here is based solely on the ground that the laws of the Commonwealth of Kentucky do not make it subject to the jurisdiction of the Public Service Commission for any purpose. It therefore follows that if plaintiff's contention be sound, it does not have to await the outcome of administrative action before resort to the Courts to determine its rights. The question in dispute is purely a legal one and is not affected to administrative de-[fol. 107] cision. *Gulf v. Interstate Natural Gas Company*, 82 F. (2) 145, 150.

Federal Trade Commission v. Claire, 274 U. S. 160, 174, does not lend support to the conclusion of the majority. In that case, the Claire Company sought to enjoin an order of the Federal Trade Commission requiring it to submit reports concerning its business, under Section 6 of the Act creating it. The Commission's orders were enforceable only by requesting the Attorney General to institute mandamus proceedings against the recalcitrant, or by supplying him with facts necessary to enforce forfeitures. Any proceeding to compel compliance or to recover forfeitures could only be had in the United States District Court on the law side of the docket. The Court refused to grant equitable relief on the ground it had adequate remedy at law in the

Federal Courts by presenting its defense to the mandatory or penalty action when instituted.

I have always understood the rule to be that the adequate remedy at law which defeats equitable jurisdiction must be such remedy in the Federal Courts, and not in the State Courts, and it must be a remedy which the Federal Courts can administer under the circumstances of the particular case, and any doubt as to the law remedy must be resolved in favor of the equitable.

The Courts have universally held that Federal Equity jurisdiction is to be tested by those rules, principles and usages as administered by the Federal Courts immediately after the adoption of the Constitution, unaffected by State statutes or practices, regardless of the antiquity of the remedy at law in the State Courts. In other words, a case cognizable by a Federal Court of Equity for inadequacy of legal remedy is still such a case regardless of State legislation or practice enlarging legal remedies, and continues thus until the Congress deprives the Federal Courts of jurisdiction.

The majority opinion, without stated legal justification, [fol. 108] and misapplying the *Claire* case, relegates the plaintiff for relief to the Franklin Circuit Court of the Commonwealth of Kentucky, because of the provisions of the Kentucky Statutes, 1936 Edition, Sec. 3952-44.

In the case of *Smyth v. Ames*, 169 U. S. 466, 550, the Court said:

"The adequacy or inadequacy of a remedy at law for the protection of the rights of one entitled upon any ground to invoke the powers of a Federal Court, is not to be conclusively determined by the statutes of the particular State in which suit may be brought. One who is entitled to sue in the Federal Circuit Court may invoke its jurisdiction in equity whenever the established principles and rules of equity permit such a suit in that court; and he cannot be deprived of that right by reason of his being allowed to sue at law in a state court on the same cause of action."

When the violator is an individual the penalties for failure to comply with the orders of the Public Service Commission are not more than \$1,000.00, or confinement in jail for not more than six months, or both, and if a corporation, not less than \$25.00 or more than \$1,000.00 for each violation,

the enforcement thereof to be by the Franklin Circuit Court of the Commonwealth of Kentucky.

In the case of *Western Union Telegraph Company v. Andrews*, 216 U. S. 165, 167, the Court, quoting from *Ex parte Young*, 209 U. S. 123, 155, said:

"The various authorities we have referred to furnish ample justification for the assertion that individuals, who, as officers of the State, are clothed with some duty in regard to the enforcement of the laws of the State, and who threaten and are about to commence proceedings, either of a civil or a criminal nature, to enforce against parties affected an unconstitutional act, violating the Federal Constitution, may be enjoined by a Federal Court of equity from such action."

The case of *New Hampshire Gas & Electric Company v. Morse*, 42 F. (2) 490, 495, is directly in point. In that case the Court said:

"It is not reasonable to hold that a person must violate a law and subject himself to possible fines or imprisonment in order to contest the constitutionality of a statute authorizing the imposition of a penalty. Threats of the constituted authorities are sufficient to set in motion an action to contest such rights. *Western Union Telegraph Company v. Andrews*, 216 U. S. 165, 30 S. Ct. 286, 54 L. ed. 430."

Compare also: *Risty v. Chicago, R. I. & Pacific Railway Company*, 270 U. S. 378, 390; *City of Fort Worth v. Southwestern Bell Telephone Company*, 80 F. (2) 972; *DiGiovanni v. Camden Fire Insurance Association*, 296 U. S. 74; *Grandin Farmers Cooperative Elevator Company v. Langer*, 5 F. Supp. 425, affirmed 292 U. S. 605; *City of Commerce v. Southern Railway Company*, 35 F. (2) 331; *Los Angeles Railway Company v. Railroad Commission of California*, 29 F. (2) 140.

For the reasons herein stated, I find myself unable to agree with the majority opinion.

IN UNITED STATES DISTRICT COURT

SEPARATE FINDINGS OF FACT AND CONCLUSIONS OF LAW—
Filed January 6, 1938

This cause having been submitted upon plaintiff's application for an interlocutory injunction and also upon its application for a permanent injunction, to the Court, composed of Hon. Zen Hicks, Circuit Judge, 6th circuit, and Hon. H. Church Ford and Hon. Elwood Hamilton, District Judges, under Section 266 of the Judicial Code of the United States, the Court, with Judge Hamilton dissenting from its conclusions of law but concurring in the dismissal for want of jurisdiction, finds the facts as follows:

[fol. 110]

FINDINGS OF FACT

(1) Petroleum Exploration is the sole plaintiff and it is a corporation organized and existing under the laws of the State of Maine and duly authorized and qualified to hold property and to do business as a foreign corporation in the state of Kentucky.

(2) The defendant, Public Service Commission of Kentucky, is a body corporate created and existing solely under the laws of the state of Kentucky with power to sue and be sued and in general regulate the rates and practices of public utilities in Kentucky. Its principal office is at Frankfort, in the eastern district of Kentucky; the only other defendants are J. C. W. Beckham, Thos. B. McGregor and James W. Cammack, Jr.; they are all the members of the Commission; the said Beckham is the chairman thereof; and each of them is a citizen of said state residing therein at said Frankfort.

(3) This suit is wholly of a civil nature and (a) arises under the Constitution and laws of the United States and (b) is between citizens of different states. The matter in controversy in this suit, exclusive of interest and costs, exceeds the sum of \$3,000.00.

(4) The plaintiff is engaged, inter alia, in the operation of certain lands in Owsley, Jackson, Clay and Knox counties, Kentucky, for, and the production therefrom it, natural gas. This gas is contained in subterranean strata and is produced by wells sunk thereto from the surface. The

plaintiff's rights to so operate said lands are vested in it by virtue of divers grants from the several land owners, commonly called oil and gas leases, of which exhibit A with the bill of complaint is typical. In addition to its production in the Knox county field the plaintiff also purchases small quantities of gas in that field.

(5) Gas from the plaintiff's properties in Owsley, Jackson and Clay counties is sold by it to the Central Kentucky [fol. 111] Natural Gas Company, hereinafter called "Central" and delivered at the corporate limits of Lexington, Kentucky, by virtue of a contract in writing entered into between the plaintiff and the Central, under date of March 24, 1927 (exhibit S with the bill); and at the corporate limits of Richmond, Kentucky, and Irvine, Kentucky, by virtue of a contract in writing entered into between the plaintiff and D. L. Johnson, under date of December 7, 1927 (exhibit C with the bill), whose rights thereunder have meanwhile been assigned to the Central.

(6) Gas produced from and purchased by the plaintiff in the Knox county field is sold by it to Peoples Gas Company of Kentucky, hereinafter called "Peoples", and delivered at the corporate limits of Barbourville, Kentucky, by virtue of a contract in writing entered into between the plaintiff and the Peoples under date of September 17, 1930, as modified (exhibits D and E with the bill); and at the corporate limits of Corbin, Kentucky, by virtue of a like contract under date of September 29, 1931, as modified (exhibits F, G and H with the bill).

(7) Gas from the plaintiff's Clay county properties is sold by it to the Peoples and delivered at the corporate limits of Manchester, Kentucky, by virtue of a like contract, under date of April 18, 1931, (exhibit I with the bill); and at the corporate limits of Somerset, Kentucky, by virtue of a like contract under date of November 1st, 1932 (exhibit K with the bill), as modified; and is sold to Edwards and Eversole Gas Company and delivered at the corporate limits of London, Kentucky, by virtue of a contract in writing entered into between the plaintiff and said last mentioned company, under date of July 3, 1935 (exhibit L with the bill).

(8) Each of the said contracts for the sale and delivery of gas fixes the price therefor at the point of delivery and

has from nine years upward yet to run. The said contracts between the plaintiff and (a) the Central, (b) said Johnson [fol. 112] (assigned by him to East Kentucky Gas Company and by it to the Central) and (c) said Edwards & Eversole Gas Company, fix the annual minimum quantities of gas to be sold and delivered thereunder. There is not and never has been any affiliation, domination or control between the plaintiff and the Central, said Johnson, said East Kentucky Gas Company, said Edwards & Eversole Gas Company or the firm members of the last mentioned company. All the said contracts were entered into at "arm's length". The plaintiff owns twenty-five thirty-seconds (25/32nds) of the outstanding capital stock of the Peoples, and it owes plaintiff some \$200,000.00.

(9) In order to make deliveries of gas as so contracted for, the plaintiff has constructed or purchased and maintains transmission lines as follows:

(a) From said Owsley-Jackson-Clay county fields to the corporate limits of Lexington, with branch lines to the corporate limits of Richmond and Irvine, sometimes called the "Lexington Line".

(b) From said Clay county field to the corporate limits of Somerset, with branch lines to the corporate limits of Manchester and London, sometimes called the "Somerset Line".

(c) From said Knox county field to the corporate limits of Barbourville and Corbin, sometimes called the "Knox County Line".

The said transmission lines are of metal pipe buried in the ground and laid through lands pursuant to grants from the landowners of rights of way therefor, of which exhibits M and N with the bill are typical. The said transmission line separately mentioned in subparagraphs (a), (b) and (c) last above are not interconnected and are independently operated. All gas passing through said transmission lines is owned exclusively by the plaintiff, and is produced by it as aforesaid, save for small quantities purchased as aforesaid in said Knox county field.

(10) The gas sold and delivered under each of the several contracts above mentioned is distributed by the purchaser to the public in the municipality at which it is de-

livered (save that gas delivered at Irvine is distributed to the public therein and also in Ravenna, adjacent thereto), pursuant to a franchise sold and granted by the municipality under authority of section 164 of the Kentucky Constitution to the distributor or its predecessor for a valuable consideration; and in each instance the municipality, under authority of said section 164, in reference to the franchise, and as parcel thereof (except in the case of Lexington, by separate instrument), in its proprietary capacity, entered into a contract with the grantee fixing the rates to be charged by the grantee and his/its assigns for gas distributed in the municipality pursuant to the franchise and effective during the term thereof. Save the separate rate contract for Lexington, which expires March 1, 1939, the said franchises have from nine years upward yet to run.

(11) On their own motion and upon the ex parte information of the individual defendants only, the defendant Public Service Commission on May 29, 1937, passed an order finding that plaintiff is an operating utility in the State of Kentucky and subject to defendants' jurisdiction under sections 3952-1-12-13 and 14 of Carroll's Kentucky Statutes, 1936 edition. By this order, defendants also fixed a public hearing before them for June 29, 1937 and ordered plaintiff to "appear at such hearing and present evidence if any it can, as will show conclusively the fairness and reasonableness of its present rates and charges for gas which it is selling to companies that are in turn selling the same gas at wholesale or retail in this state, or submit for the approval of the Commission such changes and revisions as will make such rates or charges fair and reasonable." On the return day, plaintiff filed a plea to the Commission's jurisdiction, in substance setting up the [fol. 114] facts hereinbefore found, which the Commission by order served on plaintiff on July 3, 1937, overruled and reset the said investigation for hearing on its merits on July 29, 1937. July 20, 1937, plaintiff filed an application for a rehearing of said order. Though the Commission did not formally pass upon this application, it admits that it intended and threatened to proceed with said rate hearing (case number 396) on July 29, 1937, and thereafter, and would have so proceeded but for the temporary restraining order sued out by plaintiff in this case upon the filing of the bill on July 24, 1937. Nothing in the way of a traverse

of or of an avoidance of, any of the facts set out in plaintiff's plea to the jurisdiction of the Commission was filed, and all its orders in this matter have been based wholly upon the ex parte information of the defendant members of the Commission.

(12) Exclusive of attorney's fees, the expense to plaintiff of complying with said orders would be more than \$3000.00 in employing appraisers, geologists, engineers, accountants, etc. to show the original and historical cost of its properties, cost of reproduction as a going concern, and other elements of value recognized by the law of the land for rate making purposes. Plaintiff's gas producing and transmitting properties in Kentucky and in question are of a value in excess of \$1,500,000.00. Its gas sales contracts provide for the sale of approximately one billion cubic feet of gas annually at an approximate price of \$350,000.00 and have yet from nine years onwards to run.

CONCLUSION OF LAW

Injunctive relief is an extraordinary remedy and "the mere fact that a law is unconstitutional does not entitle a party to relief by injunction against proceedings in compliance therewith, but it must appear that he has no adequate remedy by the ordinary processes of the law or that the case falls under some recognized head of equity jurisdiction."

[fol. 115] It is alleged in the bill, in substance, that the expense necessary to be incurred by the complainant in order to make the showing required by the Commission would be approximately \$25,000. and for the recovery of such expenditure, if made, the complainant would have no remedy and its great loss thereby suffered would be irreparable. It is to prevent such claimed irreparable injury that complainant asserts the right to equitable relief in this act.

Under the Act of the General Assembly of Kentucky, creating the "Public Service Commission of Kentucky", and fixing and defining its powers and functions (1924 Act, ch. 145; Kentucky Statutes section 3952b-4, the Commission can do nothing more than institute mandamus proceedings against the complainant in a court of the state to compel observance of its order or certify facts to the Commission

Counsel upon which he may base an action in the state court to recover the prescribed penalties. In either event, sole authority for making the Commission's orders coercively effective rests with the court in which such action may be instituted.

It is not shown by the bill that any court proceeding is pending or threatened. Should the Commission, however, apply to the court for mandamus to enforce compliance with its order or should the Commission Counsel institute a proceeding to recover the prescribed penalties, all questions as to the power or jurisdiction of the Commission, the regularity of its proceeding and all questions of constitutional right or statutory authority would then be open for examination and determination by the state court. If the complainant's contention that its rights, guaranteed under the Federal Constitution, would be infringed by enforcement of the order against it, be properly set up in such action and denied by the highest court of the state, adequate provision is made for review of the action of the state court by the Supreme Court of the United States (Judicial Code section 237; 28 USCA section 344).

[fol. 116] Since the Commission is powerless to coerce observance of the challenged order by inflicting penalties for disobedience or otherwise, and it is not shown that complainant's business or property rights are in any way threatened by any arbitrary action of the Commission, obviously, notwithstanding the Commission's order, the complainant may passively stand upon its claimed constitutional rights and, when necessary, may assert them in defense of any enforcement proceedings instituted in the courts without, in the meantime, suffering any injury or damage or being compelled to incur any expense whatever.

Acquiescence of the parties is not enough to justify the court in assuming jurisdiction, and the want of equity jurisdiction, if obvious, may and should be objected to by the court, sua sponte.

We are of the opinion that the bill of complaint fails to state a case within the recognized sphere of federal equity jurisdiction, and the motion for temporary injunction should be denied. The case having also been submitted on the merits, the application for a permanent injunction should be likewise denied and the bill dismissed for want of equity.

Witness, the United States District Court for the Eastern District of Kentucky, constituted under Section 266 of the Judicial Code of the United States.

This January 6, 1938.

Zen Hicks, U. S. Circuit Judge. Elwood Hamilton,
U. S. District Judge. H. Church Ford, U. S. District Judge.

[fol. 117] IN UNITED STATES DISTRICT COURT

ORDER AND DECREE—Entered January 6, 1938

This cause having been submitted simultaneously upon plaintiff's application for an interlocutory injunction, upon its application for a permanent injunction, and for a final decree, to the Court, composed of Hon. Zen Hicks, Circuit Judge, 6th Circuit, and Hon. H. Church Ford and Hon. Elwood Hamilton, District Judges, under Section 266 of the Judicial Code of the United States; the Court, with Judge Hamilton dissenting from its conclusions of law but concurring in the dismissal for want of jurisdiction, delivered written opinions and its separate findings of fact and conclusions of law. The Court orders the opinions and the separate findings, etc., filed. Plaintiff excepts to the Court's conclusions of law. The Defendants except to that part of the Court's third finding of fact that the matter in controversy in this suit, exclusive of interest and cost, exceeds the sum of Three Thousand Dollars (\$3,000.00).

Conformably to its opinion and separate findings of fact and conclusions of law, the Court orders and decrees that the application of plaintiff, Petroleum Exploration, Inc., for an interlocutory injunction and also its application for a permanent injunction be and they are hereby respectively denied; that the temporary restraining order be and it is now discharged; that plaintiff's bill of complaint be and it is hereby finally dismissed without prejudice to any proper proceeding, and all for want of jurisdiction in equity herein; and that plaintiff pay the costs of this proceeding, to all which order and decree the plaintiff excepts.

Pursuant to due waiver of notice by the defendants and by the Governor and Attorney General of Kentucky, through their counsel in open court, plaintiff heretofore tendered its petition for a rehearing and in the alternative [fol. 118] its petition for an injunction or continuance of

the restraining order pending the determination of its appeal to the Supreme Court of the United States.

It is ordered that said petition for rehearing and said petition for the alternative continuance of the restraining order, or for an injunction pending appeal, be and they are now filed.

The said Court having considered plaintiff's petition for rehearing and in the alternative its petition for an injunction or continuance of the restraining order pending the determination of its appeal to the Supreme Court of the United States, and the Court being advised overrules said petition for rehearing and also overrules said petition for an injunction or continuance of the restraining order pending appeal to the Supreme Court of the United States, to all of which plaintiff excepts.

In order to give plaintiff an opportunity to perfect its appeal herein to the Supreme Court of the United States, it is hereby ordered that this order and decree, insofar as it denies an injunction and dissolves the temporary restraining order, be stayed for a period of thirty (30) days from the date hereof.

This January 6, 1938.

Zen Hicks, U. S. Circuit Judge. Elwood Hamilton,
U. S. District Judge. H. Church Ford, U. S. District Judge.

IN UNITED STATES DISTRICT COURT

PLAINTIFF'S PETITION FOR INJUNCTION PENDING APPEAL—
Tendered December 5, 1937, Filed January 6, 1938

For its petition to the Court, constituted under Section 266 of the Judicial Code of the United States, plaintiff, [fol. 119] Petroleum Exploration, Inc., respectfully refers to its Bill in Equity and shows unto the Court as follows:

On or about November 13, 1937, the defendants in the above styled cause served upon plaintiff through the United States mails a further order in words and figures as follows:

“BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY

“A meeting of the Public Service Commission was held on this date; present: Chairman Beckham, Commissioners Cammack and McGregor.

Case No. 396

"In the Matter of Investigation on Motion of the Commission of the Rates, Rules, and Practices of the Petroleum Exploration, Inc.

Order

"This cause coming on to be heard on the petition for rehearing and amended and supplemental plea to the jurisdiction of the commission filed by the Petroleum Exploration, Inc., on July 20, 1937, and the Commission being advised,

"It is Ordered, That the petition for rehearing be and hereby it is overruled, and that the amended and supplemental plea to the jurisdiction of the Commission be and hereby it is overruled, and that this action be and hereby it is set down for formal hearing on December 7, 1937, at 10:00 o'clock A. M., on the notice of investigation and order to show cause issued by the Commission herein on May 29, 1937, to all of which the Petroleum Exploration, Inc., objects and excepts.

"This the 10th day of November, 1937.

[fol. 120] "Public Service Commission of Kentucky, by
Chas. J. White, Secretary."

Said order was entered without notice to plaintiff, in its absence, and ex parte.

The defendants are threatening to proceed with the said unlawful order and investigation on December 7, 1937, will enter numerous other orders therein against plaintiff, and are insisting that the same are and will be valid and enforceable. As plaintiff is thereby informed and believes, defendants immediately will invoke the processes of the courts of Kentucky provided under color of said Public Service Commission Act to coerce plaintiff's obedience to said order and defendants will proceed against plaintiff for a writ of mandamus in the courts of Kentucky to compel obedience to said order, or will institute proceedings therein against plaintiff to forfeit the penalties prescribed by said act for each failure by plaintiff to observe the Commission's orders in said case or defendants will cause plaintiff's officers, agents, and employees to be indicted in criminal prosecutions in the state courts for said failures or for aiding or abetting therein, or will cause all or various

of said proceedings to be instituted against plaintiff, its officers, agents and employees. Unless the restraining order herein be continued pending appeal or unless defendants be enjoined from proceeding on the said order, as prayed in plaintiff's bill, plaintiff, as it is informed and believes, will be immediately required and coerced by defendants to expend uselessly the said great sum of at least \$25,000. [fol. 121] in complying with said order and for the recovery of which it has no remedy at law or in equity.

Plaintiff has no plain, adequate or safe remedy at law and none save in equity to prevent the injuries it seeks herein to avoid.

Wherefore, plaintiff prays that the Court enjoin the defendants pending the final determination of its appeal from proceeding on or causing or instituting any action to enforce, their said notice of investigation and order to show cause, and in all the respects prayed in plaintiff's bill, and for all appropriate relief.

C. N. Kimball, E. C. O'Rear, W. J. Brennan, Allen Prewitt, Attorneys for Plaintiff.

Duly sworn to by Allen Prewitt. Jurat omitted in printing.

[fol. 122]

IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL—Filed January 6, 1938

To the Honorable Judges of the District Court of the United States for the Eastern District of Kentucky:

Your petitioner, Petroleum Exploration, a Maine corporation, respectfully shows:

July 24, 1937, petitioner filed its bill of complaint in the United States District Court for the Eastern District of Kentucky against the defendants, Public Service Commission of Kentucky, a Kentucky body corporate and a public utility regulatory authority of that State, authorized by law to sue and be sued, and against J. C. W. Beckham, Thomas B. McGregor and James W. Cammack, all its individual members, and all citizens and residents of Kentucky. Thereby, petitioner sought an interlocutory order and final decree enjoining the defendants from proceeding under their order requiring this petitioner, at a neces-

sary cost to it of \$25,000, to show conclusively the fairness and reasonableness of its agreed prices received for natural gas at wholesale under private contracts with its three customers, Central Kentucky Natural Gas Company, a corporation, Edwards & Eversole, a co-partnership, and Peoples Gas Company of Kentucky, a corporation. Petitioner sought such relief upon the ground therein set forth that these respective sales of natural gas were not to the public or to any portion of it but were severally private and that to subject them to the rate regulatory jurisdiction of defendants under Sections 3952-1 to 3952-61, inclusive, of Carroll's Kentucky Statutes, 1936 Edition, is to deprive petitioners of its property without due process of law, contrary to the Constitution of the United States; also upon the ground that the rates which the said customers of petitioner receive from the public for said gas are fixed by franchise contracts the obligations of which cannot be impaired either under the laws of Kentucky [fol. 123] or under the Constitution of the United States and that so to regulate them is to take petitioner's property not for public use but for the private benefit of its said three customers, without due process and in denial of the equal protection of the laws, as aforesaid.

Upon the filing of petitioner's application for the said interlocutory and final injunction, the same came on for hearing on August 7, 1937, before the Hon. Zen Hicks, Judge of the Circuit Court of Appeals of the United States for the 6th Circuit, Hon. H. Church Ford, Judge of the United States District Court for the Eastern District of Kentucky, and Hon. Elwood Hamilton, Judge of the United States District Court for the Western District of Kentucky, constituting a District Court under section 266 of the Judicial Code of the United States.

Thereafter, on the 6th day of January, 1938, said court made and filed herein separate findings of fact and conclusions of law, and entered an order and decree denying said interlocutory injunction and denying said permanent injunction, dismissing the petitioner's bill of complaint, and overruling its petition for an injunction pending appeal, to all of which it expected.

The said decree denying said interlocutory injunction and also denying a final injunction, and injunction pending appeal is greatly to the prejudice and injury of your petitioner and is erroneous and inequitable.

The errors upon which your petitioner claims to be entitled to an appeal are more fully set out in the assignments of error and prayer for reversal, filed with the clerk pursuant to Rule 9 of the Rules of the United States Supreme Court; and there has been likewise filed herewith a statement as to the jurisdiction of the Supreme Court of the United States as provided by Rule 12 of the Rules of the United States Supreme Court.

Wherefore, in order that your petitioner may obtain [fol. 124] relief in the premises and have opportunity to show the errors complained of, your petitioner prays for the allowance of an appeal in said cause to the Supreme Court of the United States agreeably to the statutes and rules of said Court in such cases made and provided, and that a proper order touching the security required of the petitioner may be made.

This January 6, 1938.

C. N. Kimball, W. J. Brennan, Edward C. O'Rear,
Allen Prewitt, Solicitors for Petitioner.

IN UNITED STATES DISTRICT COURT

ASSIGNMENT OF ERRORS—Filed January 6, 1938

Comes Petroleum Exploration, Inc., plaintiff and appellant in the above entitled cause and appeal, and in connection with its petition for an appeal, says that the decree entered between these parties by the United States District Court for the Eastern District of Kentucky, on the 6th day of January, 1938, is erroneous and unjust to appellant:

First. Because the court in said decree failed to adjudge that plaintiff's production of natural gas from private lands pursuant to grants of "oil and gas leases" for the purpose, and the transmission of such gas through the pipe lines laid across private lands pursuant to grants of "rights of way" for the purpose, and the sale and delivery of such gas at the corporate limits of the city of Lexington in the State of Kentucky, only and specially to Central Kentucky Natural Gas Company, by virtue of a contract in writing entered into at arms' length in the open market between it and the plaintiff on the 24th day of March, A. D.

1927, being exhibit B with the plaintiff's bill of complaint, was and is a private, and not a public utility, enterprise and not subject to regulation by the order of the Public Service Commission of Kentucky of the price for such [fol. 125] gas fixed by said contract, in violation of the due process clause of the 14th Amendment to the Constitution of the United States.

Second. Because the court in said decree failed to adjudge that the plaintiff's like production and transmission of natural gas, as set forth in paragraph First above, and the sale and delivery of such gas at the corporate limits of the cities of Richmond and Irvine in the State of Kentucky only and specially to said Central Kentucky Natural Gas Company by virtue of a contract in writing entered into between the plaintiff and D. L. Johnson at arms' length in the open market on the 7th day of December, A. D. 1927, being exhibit C with the plaintiff's bill of complaint, the rights of said Johnson having been assigned to said Central Kentucky Natural Gas Company, was and is a private enterprise, not a public utility one, and not subject to regulation by the Public Service Commission of Kentucky of the price for such gas fixed by said contract, in violation of the said due process clause.

Third. Because the court in said decree failed to adjudge that the plaintiff's like production and transmission of natural gas, as set forth in paragraph First above, and the sale and delivery of such gas at the corporate limits of the city of London in the State of Kentucky only and specially to the Edwards & Eversole Gas Company by virtue of a contract in writing entered into between it and the plaintiff on the 3rd day of July, A. D. 1935, at arms' length in the open market, being exhibit L with the bill of complaint, was and is a private enterprise, and not subject to regulation by the Public Service Commission of Kentucky of the price for such gas fixed by said contract, in violation of said due process clause.

[fol. 126] Fourth. Because the court in said decree failed to adjudge that the price for gas sold and delivered by the plaintiff only and specially to its partly owned subsidiary, Peoples Gas Company of Kentucky, at the corporate limits of each of the cities of Barbourville, Corbin, Manchester and Somerset, in the state of Kentucky, pursuant to written

contracts entered into between them fixing each such price, being exhibits D to K, inclusive, with the bill of complaint, was merely an inter-company transaction and not subject to the direct regulation by the Public Service Commission of Kentucky, in violation of the said due process clause, whatever might be the power of the said Commission to regulate the rates at which said subsidiary sells such gas to the public in each of said cities and allow a reasonable price for such gas as an operating expense of the said subsidiary, which might divide its receipts from the public with the plaintiff as they agreed.

Fifth. Because the court in said decree failed to adjudge that each of the several franchise-rate contracts entered into between the said Central Kentucky Natural Gas Company and the said city of Lexington (being exhibits O, P and Q with the said bill of complaint), the said D. L. Johnson (whose rights thereunder were thereafter assigned to said Central Kentucky Natural Gas Company) and each of said cities of Richmond (being exhibit R with the said bill of complaint), Irvine (being exhibit S with the said bill of complaint) and Ravenna (being exhibit T with the said bill of complaint), the said Peoples Gas Company of Kentucky or its predecessors and each of said cities of Barbourville (being exhibit U with the said bill of complaint), Corbin (being exhibits V, W and X with the said bill of complaint), Manchester (being exhibit Y with the said bill of complaint), and Somerset (being exhibit Z with the said bill of complaint), and the said Edwards & Eversole Gas Company and said city of London (being exhibit AA with the said [fol: 127] bill of complaint), fixing rates to be charged for gas distributed in each of said cities, respectively, was entered into by each such city pursuant to the specific authority of section 164 of the Kentucky Constitution as construed by the decisions of the Court of Appeals of Kentucky, that being the court of last resort in said state, and by virtue of the contract clause of the Constitution of the United States suspended during the respective term of each of said franchise-rate contracts the rate making power; and the threatened reduction now in price of gas sold and delivered by the plaintiff to each of said distributors for distribution in each of said cities would not be in the public interest but for the private benefit of such distributor, in violation of said due process clause.

Sixth. Because the court in said decree failed to adjudge that each of the plaintiff's said private enterprises mentioned in paragraphs First, Second and Third hereof is not within the purview of Ky. Stat. 3952-1 (c), defining "utilities" made subject to the jurisdiction of the said Commission by Ky. Stat. 3952-12, 1936 edition.

Seventh. Because the court in said decree failed to adjudge that the price for gas fixed by each of the contracts hereinabove mentioned between the plaintiff and said Central Kentucky Natural Gas Company, D. L. Johnson, Edwards & Eversole Gas Company and Peoples Gas Company of Kentucky, is not within the purview of Ky. Stat. 3952-1 (e), defining a "rate"; or within the purview of Ky. Stat. 3952-14, giving the said Commission jurisdiction to fix "rates, joint rates, tariffs, tolls or schedules."

Eighth. Because the court in said decree did adjudge that plaintiff may passively stand on its claimed constitutional rights and, when necessary, may assert them in defense of any enforcement proceedings instituted in the state courts of Kentucky under Ky. Stat. 3952-13 and 3952-61 without, in the meantime, suffering any injury or damage or being [fol. 128] compelled to incur any expense whatever, and thereby has an adequate remedy at law in said courts.

Ninth. Because the court in said decree failed to adjudge that the plaintiff would be put to the unnecessary expense of \$21,500.00 or more, for the recovery of which it would have no remedy whatsoever, in complying with the said Commission's order of May 29, 1937, requiring the plaintiff to "present evidence, if any it can, as will show conclusively the fairness and reasonableness of its present rates and charges for gas which it is selling to companies that are in turn selling the same gas at wholesale or retail in this state" (Kentucky), except under pain of forfeiting its right to be heard at the unlawful investigation initiated by the said Commission and permitting said Commission to proceed therewith and fix the prices for gas sold by the plaintiff under its said contracts hereinabove mentioned upon its, the said Commission's, own evidence and of forfeiting its, the plaintiff's right to a judicial review of the said Commission's action under Ky. Stat. 3952-44 and 3952-51; and except, under menace of the penalties and criminal prosecutions prescribed by Section 3952-61.

Tenth. Because the court in said decree adjudged that the plaintiff has an adequate remedy at law in the state courts of Kentucky by defending original mandamus or penal proceedings by the Commonwealth of Kentucky ousting the jurisdiction of the United States District Court herein.

Eleventh. Because the court denied plaintiff's applications for an interlocutory injunction and for a permanent injunction and dismissed its bill of complaint.

Wherefore, the plaintiff prays that the said order and decree be reversed and the District Court directed to enter a decree granting plaintiff a permanent injunction, enjoining the defendants from proceeding with their investigation and rate hearing No. 396 against plaintiff severally in [fol. 129] respect of plaintiff's sales of natural gas to each of its three customers, aforesaid, as prayed in its bill of complaint, and for such further decree as may be proper on the record.

C. N. Kimball, W. J. Brennan, Edward C. O'Rear,
Allen Prewitt, Solicitors for plaintiff.

IN UNITED STATES DISTRICT COURT

ORDER ALLOWING APPEAL—Entered January 6, 1938

The petition of Petroleum Exploration, Inc., the complainant in the above entitled cause, for an appeal in the above entitled cause to the Supreme Court of the United States from the judgment of the District Court of the United States for the Eastern District of Kentucky, having been filed herein, accompanied by an assignment of errors and statement as to jurisdiction, all as provided by Rules 9 and 12 of the Rules of the United States Supreme Court, and the said papers having been presented to this court and the record in this cause having been considered;

It is hereby Ordered that an appeal be and it is hereby allowed to the Supreme Court of the United States from the final decrees of the District Court of the United States for the Eastern District of Kentucky, entered in this cause on the 6th day of January, 1938, and that the Clerk of the said District Court of the United States for the Eastern District of Kentucky shall, within forty days from this

date, make and transmit to the Supreme Court of the United States, under his hand and the seal of the Court, a true copy of the material parts of the record herein, which shall be designated by præcipe or a stipulation of the parties or their counsel herein, all in accordance with Rule 10 of the Rules of the Supreme Court of the United States.

[fol. 130] It is further ordered that the said appellant shall give a good and sufficient cost bond in the sum of One Thousand Dollars (\$1,000.00) conditioned as required by law. Whereupon, came the plaintiff and tendered such bond with Ætna Casualty and Surety Company, Hartford, Connecticut, as surety, and the Court having examined said bond, approves the same, and it is ordered filed.

Done by the Court this 6th day of January, 1938.

Zen Hicks, U. S. Circuit Judge. Elwood Hamilton,
U. S. District Judge. H. Church Ford, U. S. District Judge.

[fol. 131] Bond on appeal for \$1,000.00, approved and filed January 6, 1938, omitted in printing.

[fols. 132-148] Citation, in usual form, showing waiver of service, filed January 6, 1938, omitted in printing.

[fol. 149] IN UNITED STATES DISTRICT COURT

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed January 6, 1938

To the Clerk of the United States District Court, Eastern District of Kentucky, at Frankfort:

Please prepare and complete transcript of the record in this case to be filed in the office of the Clerk of the Supreme Court of the United States, under the appeal taken, allowed and perfected to said Court, including in your transcript the following pleadings and papers on file, to-wit:

1. The bill in equity and with agreed condensed statement of exhibits entitled "agreed summary of exhibits."
2. Order approving condensed statement of exhibits.
3. Order granting temporary restraining order.
4. Bond on temporary restraining order.

5. Answer.
6. Motion for temporary injunction.
7. Order of Submission.
8. Condensed statement of evidence.
9. Order approving condensed statement.
10. Opinion.
11. Separate findings of fact and conclusions of law.
12. Order and decree.
13. Plaintiff's petition for injunction pending appeal.
14. Petition for appeal.
15. Assignment of errors.
16. Order allowing appeal.
17. Notice under Rule 12 with waiver of service.
18. Cost bond.
- [fol. 150] 19. Citation with waiver of service.
20. Statement as to jurisdiction.
21. This præcipe.
22. Designation of parts of record to be copied, with waiver of service.
23. Clerk's certificate.

Said transcript to be prepared as required by law and rules of the Supreme Court of the United States, and filed in the office of the Clerk of said Court at Washington, D. C., not later than 15 day of February, 1938.

E. C. O'Rear, W. J. Brennan, Allen Prewitt, Attorneys for Plaintiff.

The defendants by attorney hereby waive service of copy of the foregoing præcipe and approve its contents.

Hubert Meredith, Atty. Gen.; J. W. Jones, Asst.
— Gen., Attorneys for Defendants.

[fol. 151] IN UNITED STATES DISTRICT COURT

STIPULATION RE TRANSCRIPT OF RECORD—Filed January 6,
1938

The parties to this cause stipulate that the foregoing is a true, full and complete transcript of the record, as required by the præcipe approved by the parties.

W. J. Brennan, Allen Prewitt, Attorneys for Appellant. J. W. Jones, Attorney for Appellees.

Clerk's certificate to foregoing transcript omitted in printing.

[fol. 152] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION
OF PARTS OF RECORD TO BE PRINTED—Filed January 15, 1938

Comes the appellant and adopts its assignment of errors as its statement of the points to be relied upon, and represents that the whole of the record, as filed, is necessary for the consideration of the case.

This 6th day of January, 1938.

E. C. O'Rear, W. J. Brennan, Allen Prewitt, Attorneys for Appellant.

Service waived. J. W. Jones, Attorney for Appellees.

[File endorsement omitted.]

Endorsed on cover: Enter E. C. O'Rear. File No. 42,186. E. Kentucky, D. C. U. S. Term No. 705. Petroleum Exploration, Inc., appellant, vs. Public Service Commission of Kentucky, et al. Filed January 15, 1938. Term No. 705, O. T., 1937.

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